S. HRG. 98-1047

WATER RESOURCES DEVELOPMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1739

JUNE 5, 1984

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WATER RESOURCES DEVELOPMENT ACT

TUESDAY, JUNE 5, 1984

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Dole, Danforth, Heinz, Symms, and Long.

[The press release announcing the hearing, the text of bill S. 1739 and the prepared statement of Senator Baucus follow:]

[Press Release No. 84-144]

FINANCE SUBCOMMITTEE SETS HEARINGS ON S. 1739

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Committee on Finance, announced today that a hearing will be held on Section 502 and 1006 of S. 1739.

The hearing will be held on Tuesday, June 5, 1984, at 2:00 p.m. in Room SD-215 of the Dirksen Senate Office Building.

S. 1739, as reported by the Committee on Environment and Public Works, contains a Committee amendment concerning the construction, operations and maintenance of commercial inland waterways and deep-draft harbors. Two sections of S. 1739 are revenue provisions and have been sequentially referred to the Committee on Finance for consideration. The two sections are:

(1) 502 of Title V which would authorized the Secretary of the Army to impose fees on commercial users of the inland waterway system;

(2) 1006 of Title X which would authorize non-Federal entities to recover their costs of construction and incremental maintenance by imposing fees on vessels in commercial waterway transportation.

II

Calendar No. 973

98TH CONGRESS
2D SESSION

S. 1739

[Report No. 98–340]

[Report No. 98–418]

[Report No. 98–509]

To authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, AUGUST 1), 1983

Mr. ABDNOR (for himself and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

NOVEMBER 17 (legislative day, NOVEMBER 14), 1983

Reported by Mr. ABDNOR, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

APRIL 2 (legislative day, MARCH 26), 1984

Ordered, referred to the Committee on Energy and Natural Resources for not to extend beyond April 27, 1984, for consideration of section 217, section 224, title VI, section 701(b)(10) and title IX

APRIL 27, 1984

Reported, under authority of the order of the Senate of APRIL 26 (legislative day, APRIL 24), 1984, by Mr. MCCLURE, with amendments

[Omit the part printed in bold brackets and insert the part printed in bold italic]

MAY 16 (legislative day, MAY 14), 1984

Ordered, referred to the Committee on Finance for a period not to extend beyond Friday, June 8, 1984, for the consideration only of the revenue raising implications of sections 502 and 1006

June 8 (legislative day, June 6), 1984

Reported by Mr. Dole, with amendments

[Omit the part printed in italic that is struck through and insert the part printed in boldface roman]

A BILL

To authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Water Resources Development Act of 1983".~~

~~TITLE I~~

~~Notwithstanding any other provision of law, the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this Act referred to as the "Secretary"), shall obligate no sums in excess of the sums specified in this title for the combined purpose of the "Construction General" account and the "Flood Control, Mississippi River and Tributaries" account:~~

~~(1) For the fiscal year ending September 30, 1984, the sum of $1.5 billion.~~

~~(2) For the fiscal year ending September 30, 1985, the sum of $1.5 billion.~~

~~(3) For the fiscal year ending September 30, 1986, the sum of $1.6 billion.~~

~~(4) For the fiscal year ending September 30, 1987, the sum of $1.6 billion.~~

~~(5) For the fiscal year ending September 30, 1988, the sum of $1.7 billion.~~

~~Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed by Federal or non-Federal interests shall not be counted against the limitation on obligations provided for in this Act.~~

~~TITLE II—GENERAL PROVISIONS~~

~~SEC. 201. (a) Prior to initiating construction of any water resources project authorized prior to this Act, in this Act, or subsequent to the Act, which is under the jurisdiction of the Secretary and which can be anticipated to provide flood control benefits, more than 10 per centum of which are produced by an increase in anticipated land values to a single landowner, the Secretary shall enter into an agreement with such owner or owners that provides that such owner or owners will contribute, either prior to construction or when such benefits are realized, 50 per centum of that portion of the project's costs allocated to the owner's benefits.~~

~~(b) For any study initiated by the Secretary subsequent to the enactment of this Act, the Secretary shall, if appropriate, include information in such study report on the likelihood~~

~~that any single landowner would be subject to the requirements of subsection (a) of this section.~~

~~SEC. 202. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary of Agriculture under authority of Public Law 83–566, as amended, or by the Secretary, shall describe the benefits of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on such existing recreational facilities.~~

~~SEC. 203. (a) Any project or separable element thereof, that is under the responsibility of the Secretary, and for which construction has not commenced within ten years following the date of the authorization of such project, shall no longer be authorized after such ten-year period unless the Secretary, after consultation with the affected State or States, notifies the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives that continued authorization of such project remains needed and justified.~~

~~(b) Any project or separable element thereof, qualifying for deauthorization under the terms of this section or which~~

~~will qualify within one year of enactment of this section, shall not be deauthorized until such one year period has elapsed.~~

~~SEC. 204. (a) Any resolution authorizing a survey by the Secretary is automatically rescinded and is no longer authorized if no funds are expended for such survey within four full fiscal years following its approval.~~

~~(b) The Secretary is authorized and directed to submit to the Congress, within six months of enactment of this section, a list of all existing studies, whether authorized by resolution or by law, that have an inactive or deferred status, and all surveys on such list may be deauthorized within ninety days thereafter by resolution of either the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives.~~

~~SEC. 205. The second sentence of the definition of "works of improvement", contained in section 2 of Public Law 83–566, as amended, is further amended by adding after "$250,000" the following: "but not more than $10,000,000, for any projects submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives: *Provided*, That any project with an anticipated Federal cost exceeding $10,000,000 must be authorized by Act of Congress.".~~

~~SEC. 206. Section 2 of Public Law 83–566, as amended, is further amended by deleting the period and inserting a colon at the conclusion of the proviso, and adding the following: "*And provided further*, That each such project must contain benefits directly related to agriculture that account for at least 20 per centum of the total benefits of the project.".~~

~~SEC. 207. The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1985, on the feasibility, the desirability, and the public interest involved in requiring that full public access be provided to all water impoundments that have recreation-related potential and that were authorized pursuant to Public Law 83–566, as amended.~~

~~SEC. 208. Notwithstanding any other provision of law, the development, expansion, and rehabilitation of municipal and industrial water supply and distribution systems, either alone or as part of a multiple purpose project, is hereby declared to be a legitimate Federal purpose. Any single purpose municipal and industrial water supply project authorized by law may be implemented by the Secretary or by a non-Federal interest in consultation with the Secretary.~~

~~SEC. 206. Subsection (a) of section 134 of Public Law 94–587 is amended to read as follows:~~

~~"(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed within ninety days after enactment of this Act to institute a procedure enabling the engineer officer in charge of each district under the direction of the Chief of Engineers to certify, at the request of local interests, that particular local improvements for flood control can reasonably be expected to be compatible with a specific, potential project then under study or other form of consideration. Such certification shall be interpreted to assure interests that they may go forward to construct such compatible improvements at local expenses with the understanding that such improvements can be reasonably expected to be included with the scope of the Federal project, if later authorized, both for the purposes of analyzing the cost and benefits of the project and assessing the local participation in the costs of such project.".~~

~~SEC. 210. (a) The Secretary shall undertake a program of research for the control of river ice, and to assist communities in breaking up such ice, which otherwise is likely to cause or aggravate flood damage or severe streambank erosion.~~

~~(b) The Secretary is further authorized to provide technical assistance to local units of government to implement local plans to control or break up river ice. As part of such authority, the Secretary shall acquire necessary ice-control or~~

~~ice-breaking equipment that shall be loaned to local units of government.~~

~~(c) For the purposes of this section, the sum of $5,000,000 is authorized to be appropriated to the Secretary in each of the fiscal years ending September 30, 1984, through September 30, 1988, such sums to remain available until expended.~~

~~(d) No later than March 1, 1987, the Secretary shall report to the Congress on activities under this section.~~

~~SEC. 211. (a) The Secretary shall, upon the request of local public officials, survey the potential and methods for rehabilitating former industrial sites, millraces, and similar types of facilities already constructed for use as hydroelectric facilities. The Secretary shall, upon request, provide technical assistance to local public agencies, including electric cooperatives, in designing projects to rehabilitate sites that have been surveyed, or are qualified for survey, under this section.~~

~~(b) There is authorized to be appropriated to the Secretary, to implement this section, the sum of $5,000,000 for each of the fiscal years ending September 30, 1984, through September 30, 1988, such sums to remain available until expended.~~

~~SEC. 212. Section 221(b) of the Flood Control Act of 1970 (Public Law 91–611) is amended by deleting the period~~

~~at the end thereof, inserting a colon, and adding the following: *Provided*, That where the non-Federal interest is the State itself, the agreement may reflect that it does not obligate future legislative appropriations or other funds for such performance and payment when obligating future appropriations or other funds would be inconsistent with State constitutional limitations.".~~

~~SEC. 213. Notwithstanding any other provision of law, construction on any project newly authorized in this Act shall not commence until the project has been studied by the Chief of Engineers and reported favorably thereon.~~

~~SEC. 214. Subject to the provisions and requirements of title VI of this Act, the sums to be appropriated for any project authorized by this Act shall not exceed the sum listed in this Act for the specific project, as of the month and year listed for such project (or, if no date is listed, the cost shall be considered to be as of the date of the enactment of this Act), plus such amounts, if any, as may be justified solely by reason of increases in construction costs, as determined by engineering cost indices applicable to the type of construction involved, or by reason of increases in land costs.~~

~~SEC. 215. The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance~~

~~of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.~~

~~SEC. 216. (a) The Secretary may enter into a contract with a State or political subdivision thereof prior to the construction and operation, improvement or financing of a project undertaken by the Secretary which will return an appropriate share of the costs of such project based upon the identifiable benefits to local participants or interests utilizing or acquiring facilities or property owned, managed or operated by the State or political subdivision thereof as determined by an analysis of the expected economic activity. Such costs shall be recovered through an incremental charge to be imposed on each sale, lease, fee, or other transaction at the time revenues are realized engaged in by the State or political subdivision which are identified in the contract as the source of revenues.~~

~~(b) The Secretary may enter into an agreement providing for the recovery of an appropriate share of the costs of a project with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of the project. The Federal Project Repayment District or other political subdivision shall include lands adjacent to the public works facility which~~

~~receive identifiable benefits from the construction or operation of the public works facility. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall include the power to collect a portion of the transfer price from any transaction involving the sale, transfer, or change in beneficial ownership of lands and improvements within the district boundaries. The portion of such transfer price shall provide an equitable share of the costs of such project based upon projections of transactions in lands and improvements with the district.~~

~~(c) The provisions of this section may be utilized as an alternate solely or in conjunction with other provisions of Federal law imposing a cost recovery obligation. Cost recovery pursuant to the provisions of this section shall be deemed to meet cost recovery requirements of other provisions of Federal law if the economic study required by subsection (d) of this section demonstrates that income to the Federal Government equals or exceeds that required over the term of repayment required by that cost recovery provision.~~

~~(d) Prior to execution of an agreement pursuant to subsection (b) or (c) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a con-~~

~~tract under this section or an agreement with a Federal Project Repayment District will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law. Any project under this section shall also meet all other applicable criteria of Federal law.~~

~~(c) For the purposes of this section, the term—~~

~~(1) "contract" means a contract entered into with a State or a political subdivision of a State through which the Federal Government participates in a share of the revenues derived by the State or political subdivision from the lease, license, or sale of property or other products, services, or rights made available to non-governmental interests.~~

~~(2) "Federal Project Repayment District" means a benefit district or entity created pursuant to State law having defined boundaries based upon identifiable benefits to be derived from the construction and operation of a public works facility; and~~

~~(3) "cost recovery" means any requirement of Federal law that beneficiaries of a public works facility return all or a portion of the Federal investment in the facility's construction, operation or maintenance costs through fees, duties, taxes, user fees, repayment charges or other obligations requiring monetary or~~

~~other contributions including the provisions of subsection (a) and (b) of this section.~~

~~TITLE III—PROJECT PROVISIONS~~

~~SEC. 301. (a) The Secretary is authorized and directed to take, at a cost of $4,117,991, such action, substantially in accordance with the study directed by the District Engineer and dated July 20, 1981, as may be necessary to correct erosion problems along the banks of the Warrior River in order to protect Mound State Park, near Moundville, Alabama.~~

~~(b) The Secretary is authorized to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound in the county of Elmore, Alabama, by instituting bank stabilization measures at a cost of $15,400,000.~~

~~(c) The Secretary in order to protect the cultural, economic, environmental, and historical resources of Tangier Island, Virginia, located in Chesapeake Bay, is authorized and directed to design and construct a structure approximately eight thousand two hundred feet in length on the western shore of Tangier Island, adequate to protect such island from further erosion.~~

~~(d) Prior to any construction under this section, non-Federal interests shall provide without cost to the United States all necessary lands, easements, rights-of-way, and relocations, agree to operate and maintain the structures after~~

~~construction, and hold and save the United States free from damages due to the construction works.~~

~~(c) Notwithstanding the provisions of this section, the Secretary shall give priority in the allocation of funds for design and construction of projects for the purposes of erosion control to projects authorized prior to the enactment of this Act.~~

~~SEC. 302. The Secretary is authorized and directed to relocate the site of disposal for dredge spoil from the Christina River in Wilmington, Delaware, from the current location at Cherry Island to a site on the Delaware River between the Wilmington Marine Terminal and Pigeon Point.~~

~~SEC. 303. (a) The Secretary is authorized to construct, at Federal expense, a set of emergency gates in the conduit of the Abiquiu Dam, New Mexico, to increase safety and enhance flood and sediment control: *Provided*, That such feature, which was eliminated during original construction due to cost constraints, shall be considered as completing the original design concept for the project.~~

~~(b) For purposes of this section, the sum of $2,500,000 is authorized to be appropriated to the Secretary.~~

~~SEC. 304. The Secretary shall promptly transfer to the responsibility of the district engineer in Albuquerque, New Mexico, those portions of the State of New Mexico that as of the date of enactment of this Act, were under the responsibil-~~

~~ity of the district engineers in Sacramento, California, and Los Angeles, California.~~

~~SEC. 305. The Richard B. Russell Dam and Lake project, authorized by the Flood Control Act of 1966 (80 Stat. 1420), is hereby modified to authorize the Secretary to provide such power to the city of Abbeville, South Carolina, as the Secretary determines to be necessary to mitigate the reduction in hydroelectric power produced at the city-owned hydroelectric plant at Lake Secession caused by the construction and operation of the project. Such power shall be provided to the city for a period not to exceed the remaining service life of the city-owned hydroelectric plant as part of the operational requirements and costs of the project under such terms and conditions as the Secretary, in consultation with the Secretary of Energy, determines to be appropriate. The Secretary of Energy is authorized to provide assistance in the delivery of such power.~~

~~SEC. 306. The Waterbury, Vermont, project in the Winooski River Basin, authorized for modification in section 10 of the 1944 Flood Control Act, approved as Public Law 78-534 of December 22, 1944, is hereby further modified to provide that any major rehabilitation of such project shall be undertaken by the Secretary. Nothing in this section shall be construed as altering the conditions established in the Feder-~~

~~al Power Commission license numbered 2090, issued on September 16, 1954.~~

~~SEC. 307. The city waterway navigation channel project, Tacoma Harbor, Washington, authorized by the first section of the River and Harbor Act of June 13, 1902 (32 Stat. 347), is hereby modified to direct the Secretary to redefine the boundaries of such project in accordance with the recommendations contained in appendix B of the feasibility report of the Seattle District Engineer, dated November 1981.~~

~~SEC. 308. (a) The Secretary in cooperation with the governments of the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands, is hereby authorized and directed to study and draft plans for development, utilization, and conservation of water and related land resources of such territory and Commonwealth.~~

~~(b) Studies authorized by this section shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreational facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environment improvement and economic and human resources development. Such studies shall also be compatible with com-~~

~~prehensive development plans formulated by local planning agencies and other interested Federal agencies.~~

~~(c) There is authorized to be appropriated a sum of $175,000 to carry out the provisions of this section.~~

~~SEC. 309. The second paragraph under the center heading "brazos river basin" in section 10 of the Flood Control Act of 1946 (60 Stat. 641) is amended by inserting "or water supply" after "irrigation".~~

~~SEC. 310. Notwithstanding any other provision of law, the Secretary, in cooperation with the Secretary of the Interior and the Secretary of Energy, shall—~~

~~(a) quantify the hydroelectric pumping power requirements for irrigation units of the Missouri River Basin project within the State of South Dakota authorized for ultimate development by section 9 of the Flood Control Act of December 2, 1944 (58 Stat. 877, Public Law 534, 78th Congress, 2nd Session) and accompanying House Document Numbered 475 and Senate Documents Numbered 191 and 247, and by section 18 of the Flood Control Act of July 24, 1946 (60 Stat. 641, Public Law 526, 79th Congress, 2nd Session), and~~

~~(b) until such power is used for irrigation pumping in the State of South Dakota under the Pick-Sloan Missouri Basin program, make available such power at~~

~~the pumping rate authorized in the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433), for the purpose of pumping Missouri River water up to the point of field turnout or the calculated equivalent of such point for irrigation facilities designated by the State of South Dakota as subunits of the South Dakota Missouri River Pumping program to be established by the State of South Dakota for the purpose of providing main delivery irrigation pumping service for lands in the State of South Dakota, or for such other purposes and on such terms and conditions as shall be specified by the State of South Dakota: *Provided,* That, except for the purposes of pumping Missouri River water for irrigation or pumping at the Gregory County Hydroelectric Pumped Storage Facility, the power provided in this Act for the benefit of the State of South Dakota shall not be resold at less than the then current market rate and any revenue from the resale of such power shall be used by the State for economic or natural resources development purposes. The delivery of power for the benefit of the State of South Dakota under the provisions of this section shall not be considered to require or justify the reallocation of costs as currently allocated to achieve the ultimate development of the Pick-Sloan Missouri Basin program. Notwithstanding~~

~~any other provision of law, irrigation pumping subunits of the South Dakota Missouri River Pumping program shall not be required to contract for a supply of water, nor be assessed any charges for the cost of construction, operation or maintenance of facilities used to generate such irrigation pumping power or to store water under the Pick-Sloan Missouri River Basin program in excess of the then current rate charged preference power customers under firm power contracts for such costs, nor be assessed any fee for the right to use Missouri River water whether impounded or not.~~

~~SEC. 311. The project for Jackson Hole Snake River local protection and levees, Wyoming, authorized by the River and Harbors Act of 1950 (Public Law 81–516), is hereby modified to provide that the operation and maintenance of the project, and additions and modifications thereto constructed by non-Federal interests, shall be the responsibility of the Secretary of the Army, acting through the Chief of Engineers: *Provided,* That non-Federal interests shall pay the initial $35,000 in cash or materials, of any such cost expended in any one year.~~

~~SEC. 312. The project for flood protection for the Rio Grande Floodway, Truth or Consequences Unit, New Mexico, authorized by the Flood Control Acts of 1948 and 1950, is hereby modified to provide that the Secretary is au-~~

~~thorized to construct a flood control dam on Cuchillo Negro Creek, a tributary of the Rio Grande, in lieu of the authorized floodway.~~

~~SEC. 313. The Secretary is authorized and hereby directed to consider the historic Acequia Systems (community ditches) of the Southwestern United States as public entities, if these systems are chartered by the respective State laws as political subdivisions of that State. This public entity status will allow the officials of these Acequia Systems to enter into agreements and serve as local sponsors of water-related projects of the Secretary.~~

~~SEC. 314. (a) The Secretary is authorized to implement a program of research in order to demonstrate the cropland irrigation and conservation techniques described in the report issued by the New England Division Engineer, dated May 1980, for the Saint John River Basin, Maine.~~

~~(b) For the purposes of this section, there is authorized to be appropriated to the Secretary the sums of $1,825,000 in the fiscal year ending September 30, 1984, $820,000 in the fiscal year ending September 30, 1985, and $785,000 for the fiscal year ending September 30, 1986, such sums to remain available until expended.~~

~~SEC. 315. (a) Bank protection activities conducted under the Rio Grande Bank protection project pursuant to the Act of April 25, 1945 (59 Stat. 89), may be undertaken~~

~~in Starr County, Texas, notwithstanding any provision of such Act establishing the counties in which such bank protection activities may be undertaken.~~

~~(b) Any bank protection activity undertaken in Starr County, Texas, pursuant to subsection (a) of this section shall be—~~

~~(1) in accordance with such specifications as may be prepared for such purpose by the International Boundary and Water Commission, United States and Mexico; and~~

~~(2) except as provided in subsection (a) of this section, subject to the terms and conditions generally applicable to activities conducted under the Rio Grande Bank protection project.~~

~~TITLE IV—DAM SAFETY~~

~~SEC. 401. (a) Section 1 of Public Law 92–367 (86 Stat. 506) is amended by replacing the final period with a comma and inserting the following after the comma: "unless such barrier, due to its location or other physical characteristics is likely to pose a significant threat to human life or property in the event of its failure."~~

~~(b) Public Law 92–367 is further amended by inserting after section 6 the following sections:~~

~~"SEC. 7. There is authorized to be appropriated to the Secretary of the Army, acting through the Chief of Engineers~~

~~(hereafter in this Act referred to as the 'Secretary'), $15,000,000 for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987. Sums appropriated under this section shall be distributed annually among those States on the following basis: One-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 per centum of the reasonable cost of implementing an approved dam safety program in such State.~~

~~"Sec. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall determine that such program includes the following:~~

~~"(1) a procedure, whereby, prior to any construction, the plans for any dam will be reviewed to provide~~

~~reasonable assurance of the safety and integrity of such dam over its intended life;~~

~~"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that such dam has been conducted and will be operated in a safe and reasonable manner;~~

~~"(3) a procedure to inspect every dam within such State at least once every three years;~~

~~"(4) a procedure for more detailed and frequent safety inspections, if warranted;~~

~~"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;~~

~~"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or for which failure is imminent together with an identification for those dams where failure could be reasonably expected to endanger human life, of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;~~

~~"(7) the State has or can be expected to have the authority to assure that any repairs or other changes~~

~~needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and~~

~~"(8) the State has or can be expected to have authority and necessary emergency funds to make immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.~~

~~"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved one hundred and twenty days following its receipt by the Secretary unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.~~

~~"(c) Utilizing the expertise of the Board established under section 11 of this Act, the Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Board finds that a State program under this Act has proven inadequate to reasonably protect human life and property, and the Secretary agrees, the Secretary shall revoke approval of such~~

~~State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.~~

~~"SEC. 9. Not later than eighteen months after enactment of the Dam Safety Act of 1983, the Director of the Federal Emergency Management Agency shall report to the Congress on the need for and possible effects of a Federally sponsored program of reinsurance or guarantees of insurance for owners of dams. This report shall include information on a variety of possible Federal reinsurance or guarantees programs and their cost, possible effects such a program or programs might have on the private reinsurance business, and the number of dam owners possibly affected by such a program.~~

~~"SEC. 10. (a) There is authorized to be established a Federal Dam Safety Review Board (hereinafter in this Act referred to as the 'Board'), which shall be responsible for reviewing the procedures and standards utilized in the design and safety analysis of dams constructed and operated under authority of the United States, and to monitor State implementation of this Act. The Board is authorized to hire necessary staff and shall review as expeditiously as possible the plans and specifications on all dams specifically authorized by Congress prior to initiation of construction of such dam, and file an advisory report on the safety of such dam with the~~

~~appropriate agency, the appropriate State, and the Congress. The Board is authorized to utilize the expertise of other agencies of the United States and to enter into contracts for necessary studies to carry out the requirements for this section. There is authorized to be appropriated to the Board such sums as may be necessary to carry out this section.~~

~~"(b) The Board shall also study the need for a Federal loan program to assist the owners of non-Federal dams in rehabilitating such structures for safety deficiencies. This study shall include a quantitative assessment of the availability of funds from existing Federal programs and all other sources for dam rehabilitation, a quantitative assessment of the need for such funds, and an analysis of any impediments which are found to the utilization of existing Federal sources of funds for this purpose.~~

~~"(c) The Board shall consist of ten members selected for their expertise in dam safety, including one representative each from the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, the Federal Emergency Management Agency, and the Department of Agriculture, plus four members, appointed by the President for periods of four years, on a rotating basis, who are not employees of the United States. At least two members of the Board shall be employees of the States having an approved program under section 8 of this Act. The Chairman of the~~

~~Board shall be selected from among those members who are not employees of the United States.~~

~~"SEC. 11. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials of such State to participate with officials of such agency in all safety inspections of such dam.~~

~~"SEC. 12. The Secretary shall, at the request of any State that has or intends to develop a dam safety program under section 8 of this Act, provide training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1984, and $500,000 during each of fiscal years ending September 30, 1985, through September 30, 1987.~~

~~"SEC. 13. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States of the results of such research. There is authorized to be appropriated to~~

~~carry out this section $1,000,000 for each of the fiscal years ending September 30, 1984, through September 30, 1987.~~

~~"SEC. 14. The Secretary is authorized to maintain and periodically publish updated information on the inventory of dams authorized in section 5 of this Act. For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary $500,000 for each of the fiscal years ending September 30, 1984, through September 30, 1987.".~~

~~SEC. 402. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary of the Army, acting through the Chief of Engineers, or the Secretary of Agriculture, acting under Public Law 83-566, as amended, which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.~~

~~SHORT TITLE~~

~~SEC. 403. This title shall be known as the "Dam Safety Act of 1983".~~

~~TITLE V—INLAND NAVIGATION~~

~~SEC. 501. Notwithstanding any other provision of law, the Secretary shall not obligate more than $500,000,000 for construction, rehabilitation, renovation, operations, and~~

~~maintenance on the inland waterways of the United States in any of the fiscal years ending September 30, 1985, through September 30, 1999.~~

~~SEC. 502. (a) In addition to sums available annually under the terms of section 501 of this title, and subject to the provisions of section 503 of this title, the Secretary is authorized to impose, collect, and expend use charges and tolls on the commercial users of the inland waterways of the United States to the degree necessary for the construction, rehabilitation, renovation, operations, and maintenance of a system of inland waterways so that such waterways are sufficient to meet the needs of the commercial waterway users.~~

~~(b) For the purpose of this title, the term "inland waterways of the United States" means those waterways authorized to be constructed or maintained by the Secretary to depths of twelve feet or less.~~

~~SEC. 503. (a) There is hereby established an Inland Waterway Users Board (hereinafter referred to as the "Users Board") composed of twenty-one members selected by the Secretary in order to represent a spectrum of users and shippers utilizing the various inland waterways of the United States for commercial purposes.~~

~~(b) The Users Board shall meet at least annually to develop and make recommendations to the Secretary for spending levels on the inland waterways of the United States for~~

~~the following fiscal year. The Secretary shall not obligate funds under this Act in excess of the levels recommended by the Users Board.~~

~~SEC. 504. Section 4 of the Act of July 5, 1884 (23 Stat. 147), as amended by the Act of March 3, 1909 (33 U.S.C. 5), is hereby amended to read as follows:~~

~~"SEC. 4. The Secretary of the Army, acting through the Chief of Engineers, is authorized to operate, maintain, and keep in repair and rehabilitate any project for the benefit of navigation belonging to the United States or that may be hereafter acquired or constructed: *Provided*, That whenever, in the judgment of the Secretary of the Army, the condition of any of the aforesaid works is such that its reconstruction or replacement is essential to efficient and economical maintenance and operation, as herein provided for, and if the cost shall be less than $25,000,000, the Secretary may proceed with such work: *Provided further*, That the project does not increase the scope or change the location of an existing project: *And provided further*, That nothing herein contained shall be held to apply to the Panama Canal.".~~

~~SEC. 505. The following works of improvement to the inland waterways of the United States are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated:~~

~~(1) Helena Harbor, Phillips County, Arkansas: Report of the Chief of Engineers dated October 17, 1980, at a Federal cost of $42,000,000 (October 1982);~~

~~(2) White River Navigation to Batesville, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $20,500,000 (October 1982);~~

~~(3) Lake Pontchartrain, North Shore, Louisiana: Report of the Chief of Engineers dated February 14, 1979 at a Federal cost of $850,000 (October 1982);~~

~~(4) Greenville Harbor, Mississippi: Reports of the Chief of Engineers dated November 15, 1977, and February 22, 1982, at a Federal cost of $27,700,000 (October 1982);~~

~~(5) Vicksburg Harbor, Mississippi: Report of the Chief of Engineers dated August 13, 1979, at a Federal cost of $54,700,000 (October 1982);~~

~~(6) Atlantic Intracoastal Waterway Bridges, North Carolina: Report of the Chief of Engineers dated October 1, 1975, at a Federal cost of $8,000,000 (October 1982);~~

~~(7) Olcott Harbor, New York: Report of the Chief of Engineers dated June 11, 1980, at a Federal cost of $5,320,000 (October 1982);~~

~~(8) Bonneville Lock and Dam, Oregon and Washington-Columbia River and Tributaries Interim Report: Reports of the Chief of Engineers dated March 14, 1980, and February 10, 1981, at a Federal cost of $177,000,000 (October 1982);~~

~~(9) Memphis Harbor, Memphis, Tennessee: Report of the Chief of Engineers dated February 25, 1981, at a Federal cost of $43,000,000 (October 1982);~~

~~(10) Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virignia: Report of the Chief of Engineers dated April 8, 1982, at a Federal cost of $313,000,000 (October 1982);~~

~~SEC. 506. (a) The Secretary is authorized to maintain and rehabilitate the New York State Barge Canal:~~ ~~*Provided, however,*~~ ~~That the State of New York shall provide one-half of the annual costs to operate, maintain, and rehabilitate the canal:~~ ~~*And provided further,*~~ ~~That control and operation of the canal shall continue to reside with the State of New York.~~

~~(b) For the purposes of this Act, the New York State Barge Canal is defined to be—~~

~~(i) the Erie Canal, which connects the Hudson River at Waterford with the Niagara River at Tonawanda;~~

~~(ii) the Oswego Canal, which connects the Erie Canal at Three Rivers with Lake Ontario at Oswego;~~

~~(iii) the Champlain Canal, which connects the easterly end of the Erie Canal at Waterford with Lake Champlain at Whitehall; and~~

~~(iv) the Cayuga and Seneca Canals, which connect the Erie Canal at a point near Montezuma with Cayuga and Seneca Lakes and through Cayuga Lake and Ithaca and through Seneca Lake with Montour Falls.~~

~~SEC. 507. (a) To ensure the coordinated development and enhancement of the Upper Mississippi River System, the Congress declares that the purpose of this section is to recognize such System as a nationally significant ecosystem and a nationally significant commercial navigation system. The Congress further recognizes that such System provides a diversity of opportunities and experiences. Such System shall be administered and regulated in recognition of its several purposes.~~

~~(b) For purposes of this section—~~

~~(1) the term "Master Plan" means the Comprehensive Master Plan for the Management of the Upper Mississippi River System, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to the Congress pursuant to the~~

~~Act entitled "An Act to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax, and for other purposes", approved October 21, 1978 (92 Stat. 1693; Public Law 95-502), hereafter in this Act referred to as the "Act of October 21, 1978"; and~~

~~(2) the terms "Upper Mississippi River System" and "System" mean those river reaches having commercial navigation channels on the following rivers: the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; the Black River, Wisconsin; the Saint Croix River, Minnesota and Wisconsin; the Illinois River and Waterway, Illinois; and the Kaskaskia River, Illinois.~~

~~(c)(1) The Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi River System. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.~~

~~(2) Section 101 of the Act of October 21, 1978 is amended by striking out the last two sentences of subsection (b) and the last sentence of subsection (j).~~

~~(d)(1) The Congress hereby gives its consent to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into agreements,~~

~~not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements.~~

~~(2) Each officer or employee of the United States responsible for management of any part of the System is authorized in accordance with such officer's or employee's legal authority to assist and participate, when requested by any agency established under paragraph (1) of this subsection, in programs or deliberations of such agency.~~

~~(e)(1) The Secretary is authorized to provide for the engineering, design, and construction, at an estimated cost of $200,000,000, of a second lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri. Such second lock shall be 110 feet by 600 feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of the Act of October 21, 1978.~~

~~(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.~~

~~(f)(1) The Secretary, acting in consultation with the Secretary of Transportation and the States in the System, shall monitor traffic movements on the System for the purpose of~~

~~verifying lock capacity, updating traffic projections, and refining the economic evaluations so as to verify the need for future capacity expansion of the System as well as the future need for river rehabilitation and environmental enhancement.~~

~~(2) There are authorized to be appropriated to the Secretary for the first fiscal year beginning after the date of enactment of this Act, and for each of nine fiscal years following thereafter, such sums as may be necessary to carry out paragraph (1) of this subsection.~~

~~(g)(1) The Secretary of the Interior, in concert with any appropriate State agency, is authorized to undertake with respect to the Upper Mississippi River System, substantially in accordance with the recommendations of the Master Plan—~~

~~(A) a habitat rehabilitation and enhancement program to plan, construct, and evaluate projects to protect, enhance, or rehabilitate aquatic and terrestrial habitats lost or threatened as a result of man-induced activities or natural factors;~~

~~(B) the implementation of a long-term resource monitoring program; and~~

~~(C) the implementation of a computerized inventory and analysis system.~~

~~(2) For the purposes of carrying out subparagraph (g)(1)(A) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed~~

~~$8,200,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed $12,400,000 for the second fiscal year beginning after the date of enactment of this Act, and not to exceed $13,000,000 for each of the succeeding eight fiscal years.~~

~~(3) For purposes of carrying out subparagraph (g)(1)(B) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $7,680,000 for the first fiscal year beginning after the date of enactment of this Act and not to exceed $5,080,000 for each of the succeeding nine fiscal years—~~

~~(A) not to exceed $40,000 for the first fiscal year beginning after the date of enactment of this Act;~~

~~(B) not to exceed $280,000 for the second fiscal year beginning after the date of enactment of this Act;~~

~~(C) not to exceed $1,220,000 for the third fiscal year beginning after the date of enactment of this Act; and~~

~~(D) not to exceed $775,000 for each of the succeeding seven fiscal years.~~

~~(h)(1) The Secretary of the Interior, in consultation with the Secretary and working through an agency, if any, established by the States for management of the System under subsection (d) of this section, is authorized to implement a program of recreational projects for the System and to con-~~

~~duct an assessment of the economic benefits generated by recreational activities in the System.~~

~~(2) For purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $500,000 for each of the first three fiscal years beginning after the date of enactment of this Act and, for purposes of carrying out the assessment of the economic benefits of recreational activities as authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $300,000 for the first and second fiscal years and $150,000 for the third fiscal year beginning after the computerized inventory and analysis system implemented pursuant to subsection (g)(1)(C) of this section is fully functional.~~

~~(i)(1) The Congress finds that there has been reasonable compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in the formulation of the Master Plan and the environmental impact statement on construction of the first lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri.~~

~~(2) The actions authorized in subsection (c) of this section are exempt from the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).~~

~~(j) None of the funds appropriated pursuant to the authorization contained in subsections (g) and (h) of this section shall be considered to be attributable to navigation.~~

~~(k) This section may be cited as the "Upper Mississippi River System Management Act".~~

~~TITLE VI—COST SHARING~~

~~SEC. 601. (a) The construction of any water resource project or related land resources project authorized in this Act or after the date of enactment of this Act, excluding any project for the purposes of navigation, shall be initiated only after the appropriate Federal agency has entered into an agreement with a non-Federal project sponsor to share the costs of construction in accordance with the following guidelines, and agrees to pay, upon completion of project construction, 100 per centum of operation, maintenance, and rehabilitation costs:~~

~~(1) hydroelectric power, publicly financed: not less than 100 per centum;~~

~~(2) hydroelectric power, privately financed: a negotiated payment for the right to use a Federal facility or a partnership arrangement, but not less than 100 per centum of the costs associated with such right or arrangement;~~

~~(3) municipal and industrial water: 100 per centum;~~

~~(4) recreation: 50 per centum of joint and separable costs;~~

~~(5) beach erosion control; not less than 50 per centum for publicly owned shores and not less than 100 per centum for privately owned shores within project limits;~~

~~(6) fish and wildlife mitigation: not less than 35 per centum, to be allocated in proportion to project costs;~~

~~(7) fish and wildlife enhancement: not less than 35 per centum;~~

~~(8) urban and rural flood protection, rural drainage, or agricultural water supplies: not less than 35 per centum, or, for projects covered by section 3 of the Flood Control Act of 1936, as amended, the value of lands, easements, right-of-way and relocations required for project construction, whichever is greater, subject to an ability to pay determination under section 603 of this title.~~

~~(b) Any cost-sharing agreement for the construction of any water or related land resources project involving two or more purposes may provide for an allocation of costs to each purpose which is greater or lesser than the actual costs associated with each purpose, but the total non-Federal contribution for any such multipurpose project shall equal the amount~~

~~determined by adding together the cost-sharing and repayment requirements calculated under this section for each purpose separately.~~

~~SEC. 602. (a) Payment inkind may be accepted for any non-Federal contribution under this Act, except that not less than 5 per centum of the cost of any urban or rural flood protection project substantially involving structural works shall be paid in cash by the non-Federal project sponsor during construction of such project.~~

~~(b) To the extent that urban and rural flood protection benefits are provided by nonstructural measures, a cash contribution shall not be required of non-Federal project sponsors.~~

~~(c) The appropriate Federal agency may permit the full non-Federal contribution to be made, without interest, during construction of the project or, with interest, over a period not to exceed thirty years from the date of project completion.~~

~~(d) Any repayment by any non-Federal sponsor under this section shall include—~~

~~(i) the applicable rate of interest, if any, authorized by law for the project, or~~

~~(ii) when no other rate is provided by law, the rate of interest determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the~~

~~United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which funds for the construction of the project are first disbursed.~~

~~(c) At the request of any non-Federal private or public sponsor the appropriate Federal agency may permit such non-Federal sponsor to delay the initial payment of any non-Federal contribution under this Act for up to one year after the date when construction is begun on the project for which such contribution is to be made.~~

~~SEC. 603. Any cost-sharing agreement under this Act with a non-Federal private or public sponsor of an urban and rural flood protection, rural drainage, or agricultural water supply project shall be consistent with the ability of any such non-Federal sponsor to pay. The ability of any non-Federal sponsor to pay shall be determined by the appropriate Federal agency in accordance with any applicable law or, in the absence of applicable law, under procedure to be determined by the appropriate agency.~~

~~SEC. 604. No additional cost sharing or repayment shall be required from any non-Federal sponsor for any water or related land resources project authorized prior to the date of enactment of this Act beyond any applicable cost-sharing and repayment requirements of existing law, but construction shall be not be initiated prior to the fiscal year ending Sep-~~

~~tember 30, 1994, on any such project or separable element thereof unless—~~

~~(a) a non-Federal sponsor agrees to pay any cost-sharing and repayment requirements associated with such project under existing law and 50 per centum of any additonal cost-sharing or repayment contributions associated with such project under section 601 of this title; or~~

~~(b) such project is an uncompleted unit (or reformulation of such unit) of a comprehensive river basin program of development to be located in a State in which large acreages of land or volumes of water have been dedicated to such program for the benefit of citizens in other States and thereby denied to the use of the citizens of such State.~~

~~In determining priorities for development among projects authorized for development prior to the date of enactment of this Act, the appropriate Federal agencies shall consult with the States in which such projects are to be located and shall consider any priorities established by any State for the development of such projects.~~

~~TITLE VII~~

~~The following works of improvement of rivers and harbors and other waterways for flood control and other purposes are hereby adopted and authorized to be prosecuted by~~

~~the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated:~~

~~(a) Flood Control.—~~

~~(1) Village Creek, Jefferson County, Alabama: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $20,700,000 (October 1982);~~

~~(2) Eight Mile Creek, Paragould, Arkansas: Report of the Chief of Engineers dated August 10, 1979, at a Federal cost of $14,500,000 (October 1982);~~

~~(3) Fourche Bayou Basin, Little Rock, Arkansas: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $19,700,000 (October 1982);~~

~~(4) Helena and vicinity, Arkansas: Report of the Chief of Engineers dated June 23, 1983, at a Federal cost of $11,600,000 (October 1982);~~

~~(5) Little Colorado River at Holbrook, Arizona: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $7,730,000 (October 1982);~~

~~(6) Cache Creek Basin, California: Report of the Chief of Engineers dated April 27, 1981, at a Federal cost of $21,100,000 (October 1982);~~

~~(7) Redbank and Fancher Creeks, California: Report of the Chief of Engineers dated May 7, 1981, at a Federal cost of $57,200,000 (October 1982);~~

~~(8) Santa Ana River Mainstem, Including Santiago Creek, California: Report of the Chief of Engineers dated January 15, 1982, at a Federal cost of $1,180,000 (October 1982): *Provided*, That construction is restricted to the following elements of the project: improvements at Prado Dam which limit the reservoir taking line to no greater than an elevation of 566 feet; Santa Ana River Channel improvements in Orange County; improvements along Santiago Creek; improvements of the Oak Street Drain; and improvement of the Mill Creek levees; features for mitigation of project effects and preservation of endangered species, and recreation features identified in the Chief of Engineers' Report for these project elements;~~

~~(9) Fountain Creek, Pueblo, Colorado, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $6,600,000 (October 1982);~~

~~(10) Metropolitan Denver and South Platte River and Tributaries, Colorado, Wyoming, and Nebraska: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $9,080,000 (October 1982);~~

~~(11) Oates Creek, Georgia: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $8,360,000 (October 1982);~~

~~(12) Agana River, Guam: Report of the Chief of Engineers dated March 14, 1977, at a Federal cost of $5,820,000 (October 1982);~~

~~(13) Big Wood River and Tributaries, Idaho, Interim Report—Little Wood River, Vicinity of Gooding and Shoshone, Idaho: Report of the Chief of Engineers dated November 2, 1977, at a Federal cost of $3,750,000 (October 1982);~~

~~(14) Rock River at Rockford and Vicinity, Illinois, Loves Park Interim: Report of the Chief of Engineers dated September 15, 1980, at a Federal cost of $22,800,000 (October 1982);~~

~~(15) Halstead, Kansas: Report of the Chief of Engineers dated May 8, 1979, at a Federal cost of $6,130,000 (October 1982);~~

~~(16) Atchafalaya Basin Floodway system, Louisiana: Report of the Chief of Engineers dated February 28, 1983, at a Federal cost of $195,000,000 (October 1982);~~

~~(17) Bushley Bayou, Louisiana, Phase I GDM: Reports of the Chief of Engineers dated April 30,~~

~~1980, and August 12, 1982, at a Federal cost of $42,800,000 (October 1982);~~

~~(18) Louisiana State Penitentiary Levee, Mississippi River: Report of the Chief of Engineers dated December 10, 1982, at a Federal cost of $20,500,000 (October 1982);~~

~~(19) Quincy Coastal Streams, Massachusetts, Town Brook Interim: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $25,100,000 (October 1982);~~

~~(20) Mississippi River at St. Paul, Minnesota: Report of the Chief of Engineers dated June 16, 1983, at a Federal cost of $7,200,000 (October 1982);~~

~~(21) Redwood River at Marshall, Minnesota: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $3,130,000 (October 1982);~~

~~(22) Root River Basin, Minnesota: Report of the Chief of Engineers dated May 13, 1977, at a Federal cost of $8,150,000 (October 1982);~~

~~(23) South Fork Zumbro River Watershed at Rochester, Minnesota: Report of the Chief of Engineers dated February 23, 1979, at a Federal cost of $77,800,000 (October 1982);~~

~~(24) Horn Lake Creek and Tributaries, Including Cow Pen Creek, Tennessee and Mississippi: Report of~~

~~the Chief of Engineers dated January 4, 1983, at a Federal cost of $2,450,000 (October 1982);~~

~~(25) Robinson's Branch of the Rahway River at Clark, Scotch Plains, and Rahway, New Jersey: Report of the Chief of Engineers dated October 10, 1975, at a Federal cost of $13,500,000 (October 1982);~~

~~(26) Rahway River and Van Winkles Brook at Springfield, New Jersey: Report of the Chief of Engineers dated October 24, 1975, at a Federal cost of $12,300,000 (October 1982);~~

~~(27) Green Brook Subbasin, Raritan River Basin, New Jersey: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $72,900,000 (October 1982);~~

~~(28) Middle Rio Grande Flood Protection, Bernalillo to Belen, New Mexico: Report of the Chief of Engineers dated June 23, 1981, at a Federal cost of $39,200,000 (October 1982): *Provided*, That the Secretary is authorized to increase flood protection through the dredging of the bed of the Rio Grande in the vicinity of Albuquerque, New Mexico, to an elevation lower than existed on the date of enactment of this Act;~~

~~(29) Puerco River and Tributaries, Gallup, New Mexico: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $3,220,000 (October 1982);~~

~~(30) Cazenovia Creek Watershed New York: Report of the Chief of Engineers dated September 8, 1977, at a Federal cost of $1,910,000 (October 1982);~~

~~(31) Mamaroneck and Sheldrake Rivers Basin and Byram River Basin, New York and Connecticut: Report of the Chief of Engineers dated April 4, 1979, at a Federal cost of $44,100,000 (October 1982);~~

~~(32) Hocking River at Logan and Nelsonville, Ohio: Report of the Chief of Engineers dated June 23, 1978, at a Federal cost of $6,180,000 for Logan and $6,460,000 for Nelsonville (October 1982);~~

~~(33) Miami River, Fairfield, Ohio: Report of the Chief of Engineers dated June 22, 1983, at a Federal cost of $9,200,000 (October 1982);~~

~~(34) Miami River, Little Miami River, Interim Report Number Two, West Carrollton, Holes Creek, Ohio: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $5,950,000 (October 1982);~~

~~(35) Muskingum River Basin, Ohio: Report of the Chief of Engineers dated February 3, 1978, at a Fed-~~

~~eral cost of $3,500,000 for Mansfield and $6,420,000 for Killbuck (October 1982);~~

~~(36) Scioto River at North Chillicothe, Ohio: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $9,070,000 (October 1982);~~

~~(37) Mingo Creek, Tulsa, Oklahoma: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $87,800,000 (October 1982);~~

~~(38) Parker Lake, Muddy Boggy Creek, Oklahoma: Report of the Chief of Engineers dated May 30, 1980, at a Federal cost of $43,800,000 (October 1982);~~

~~(39) Harrisburg, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated May 16, 1979, at a Federal cost of $102,000,000 (October 1982);~~

~~(40) Lock Haven, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $65,500,000 (October 1982);~~

~~(41) Saw Mill Run, Pittsburgh, Pennsylvania: Report of the Chief of Engineers dated January 30, 1978, at a Federal cost of $7,020,000 (October 1982);~~

~~(42) Big River Reservoir, Rhode Island: Report of the Chief of Engineers dated March 9, 1983, at a Federal cost of $40,900,000 (October 1982);~~

~~(43) Nonconnah Creek, Tennessee and Mississippi: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $19,200,000 (October 1982);~~

~~(44) Buffalo Bayou and Tributaries, Texas: Report of the Chief of Engineers dated June 13, 1978, at a Federal cost of $75,000,000 (October 1982);~~

~~(45) Boggy Creek, Austin, Texas: Report of the Chief of Engineers dated January 19, 1981, at a Federal cost of $13,800,000 (October 1982);~~

~~(46) Lake Wichita, Holliday Creek, Texas: Report of the Chief of Engineers dated July 9, 1979, at a Federal cost of $14,900,000 (October 1982);~~

~~(47) James River Basin, Richmond, Virginia, Phase I GDM: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $79,600,000 (October 1982);~~

~~(48) Chehalis River at South Aberdeen and Cosmopolis, Washington: Report of the Chief of Engineers dated February 8, 1977, at a Federal cost of $19,300,000 (October 1982); and~~

~~(49) Yakima Union Gap, Washington: Report of the Chief of Engineers dated May 7, 1980, at a Federal cost of $8,640,000 (October 1983).~~

~~(b) HYDROPOWER DEVELOPMENT.—~~

~~(1) South Central Railbelt Area, Alaska, Hydroelectric Power, Valdez and Copper River Basin: Report of the Chief of Engineers dated October 29, 1982, at a Federal cost of $40,500,000 (October 1982);~~

~~(2) Murray Lock and Dam, Hydropower, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $92,900,000 (October 1982);~~

~~(3) Metropolitan Atlanta Area Water Resources Management Study, Georgia: Report of the Chief of Engineers dated June 1, 1982, at a Federal cost of $24,500,000 (October 1982);~~

~~(4) Lucky Peak Dam and Lake, Idaho, Modification Study: Report of the Chief of Engineers dated March 17, 1980, at a Federal cost of $98,700,000 (October 1982);~~

~~(5) W. D. Mayo Lock and Dam 14, Hydropower, Oklahoma: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $112,100,000 (October 1982);~~

~~(6) McNary Lock and Dam Second Powerhouse, Columbia River, Oregon and Washington, Phase I GDM: Report of the Chief of Engineers dated June~~

~~24, 1981, at a Federal cost of $600,000,000 (October 1982); and~~

~~(7) Gregory County Hydroelectric Pumped Storage Facility, Stages I and II, South Dakota: Report of the Chief of Engineers dated April 26, 1983, together with such additional associated multipurpose water supply and irrigation features as are generally described in the final feasibility report of the District Engineer, at a Federal cost of $1,280,000,000, not to exceed $100,000,000 of which may be used to construct such associated water supply and irrigation features. Notwithstanding any other provision of law, the Corps of Engineers and the Western Area Power Administration shall cooperate in the construction and operation of the project, and the marketing of project output, in accordance with terms and conditions agreeable to the State of South Dakota.~~

~~(c)(1) SHORELINE PROTECTION.—~~

~~(A) Charlotte County, Florida: Report of the Chief of Engineers dated April 2, 1982, at a Federal cost of $1,440,000 (October 1982);~~

~~(B) Indian River County, Florida: Report of the Chief of Engineers dated December 21, 1981, at a Federal cost of $2,300,000 (October 1982);~~

~~(C) Panama City Beaches, Florida: Report of the Chief of Engineers dated July 8, 1977, at a Federal cost of $26,200,000 (October 1982);~~

~~(D) Saint Johns County, Florida: Report of the Chief of Engineers dated February 26, 1980, at a Federal cost of $7,660,000 (October 1982);~~

~~(E) Jekyll Island, Georgia: Report of the Chief of Engineers dated March 3, 1976, at a Federal cost of $5,870,000 (October 1982);~~

~~(F) Atlantic Coast of Maryland and Assateague Island, Virginia: Report of the Chief of Engineers dated September 29, 1981, at a Federal cost of $21,000,000 (October 1982);~~

~~(G) Atlantic Coast of New York City from Rockaway Inlet to Norton Point, New York: Report of the Chief of Engineers dated August 18, 1976, at a Federal cost of $2,970,000 (October 1982);~~

~~(H) Presque Isle Peninsula, Erie, Pennsylvania: Report of the Chief of Engineers dated October 2, 1981, at a Federal cost of $17,200,000 (October 1982); and~~

~~(I) Folly Beach, South Carolina: Report of the Chief of Engineers dated March 17, 1981, at a Federal cost of $1,110,000 (October 1982).~~

~~(2) Construction of the projects authorized in this subsection shall be subject to determinations of the Secretary, after consultation with the Secretary of the Interior, that the construction will be in compliance with the Coastal Barrier Resources Act (Public Law 97–348).~~

~~(d) MITIGATION.—~~

~~(1) Fish and Wildlife Program for the Sacramento River Bank Protection Project, California, First Phase: Report of the Chief of Engineers dated September 1, 1981, at a Federal cost of $2,030,000 (October 1982);~~

~~(2) Richard B. Russell Dam and Lake, Savannah River, Georgia and South Carolina, Fish and Wildlife Mitigation Report: Report of the Chief of Engineers dated May 11, 1982, at a Federal cost of $18,700,000 (October 1982);~~

~~(3) West Kentucky Tributaries Projects, Fish and Wildlife Mitigation Plan, Obion Creek, Kentucky: Report of the Chief of Engineers dated September 16, 1980, at a Federal cost of $3,980,000 (October 1982);~~

~~(4) Cape May Inlet to Lower Township, New Jersey, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $15,600,000 (October 1982); and~~

~~(5) Cooper Lake and Channels Project, Texas, Report on Fish and Wildlife Mitigation: Report of the~~

~~Chief of Engineers dated May 21, 1982, at a Federal cost of $7,570,000 (October 1982).~~

~~(c) DEMONSTRATION.—~~

~~(1) Cabin Creek, West Virginia, Demonstration Reclamation Project: Report of the Chief of Engineers dated March 1, 1979, at a Federal cost of $32,800,000 (October 1982);~~

~~(2) Lava Flow Control, Island of Hawaii, Hawaii: Report of the Chief of Engineers dated July 21, 1981, at a Federal cost of $3,950,000 (October 1982);~~

~~(3) San Francisco Harbor, California, Fisherman's Wharf Area: Reports of the Chief of Engineers dated February 3, 1978, and June 7, 1979, at a Federal cost of $13,500,000 (October 1982).~~

That this Act may be cited as the "Water Resources Development Act of 1983".

TITLE I

Notwithstanding any other provision of law, the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this Act referred to as the "Secretary"), shall from funds appropriated obligate no sums in excess of the sums specified in this title for the combined purpose of the "Construction, General" account and the "Flood Control, Mississippi River and Tributaries" account:

(1) For the fiscal year ending September 30, 1985, the sum of $1.5 billion.

(2) For the fiscal year ending September 30, 1986, the sum of $1.5 billion.

(3) For the fiscal year ending September 30, 1987, the sum of $1.6 billion.

(4) For the fiscal year ending September 30, 1988, the sum of $1.6 billion.

(5) For the fiscal year ending September 30, 1989, the sum of $1.7 billion.

Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed by Federal or non-Federal interests shall not be counted against the limitation on obligations provided for in this Act.

TITLE II—GENERAL PROVISIONS

SEC. 201. (a) Prior to initiating construction of any water resources project authorized prior to this Act, in this Act, or subsequent to the Act, which is under the jurisdiction of the Secretary and which can be anticipated to provide flood control benefits, more than 10 per centum of which are produced by an increase in anticipated land values to a landowner, the Secretary shall enter into an agreement with such *owner or owners that provides that such owner or owners will repay to the Secretary for deposit in the Treasury, either prior to construction or when such benefits are realized, 50 per centum of that portion of the project's costs allocated to the owner's benefits.*

(b) For any study initiated by the Secretary subsequent to the enactment of this Act, the Secretary shall, if appropriate, include information in such study report on the likelihood that any single landowner would be subject to the requirements of subsection (a) of this section.

SEC. 202. Any report describing a project having recreation benefits that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary of Agriculture under authority of Public Law 83–566, as amended, or by the Secretary, shall describe the usage of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on the usage of such existing recreational facilities.

SEC. 203. (a) Any project, or separable element thereof, that is under the responsibility of the Secretary, and for which construction has not commenced within ten years following the date of the authorization of such project, shall no longer be authorized after such ten-year period unless the

Secretary, after consultation with the affected State or States, notifies the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives that continued authorization of such project remains needed and justified.

(b) Any project, or separable element thereof, qualifying for deauthorization under the terms of this section upon enactment of this Act or which will qualify within one year of enactment of this Act, shall not be deauthorized until such one year period has elapsed.

SEC. 204. Any feasibility survey authorized by any resolution of a committee or Act of Congress to be undertaken by the Secretary is automatically rescinded and is no longer authorized if no funds are expended for such survey within five full fiscal years following its approval.

SEC. 205. The second sentence of the definition of "works of improvement", contained in section 2 of Public Law 83–566, as amended, is further amended by adding after "$250,000" the following: "but not more than $10,000,000, for any projects submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives: Provided, That any such project with an an-

ticipated Federal cost exceeding $10,000,000 must be authorized by Act of Congress.".

SEC. 206. Section 2 of Public Law 83–566, as amended, is further amended by deleting the period and inserting a colon at the conclusion of the proviso, and adding the following: "And provided further, That each such project submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives must contain benefits directly related to agriculture that account for at least 20 per centum of the total benefits of the project.".

SEC. 207. The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1985, on the feasibility, the desirability, and the public interest involved in requiring that full public access be provided to any or all water impoundments that have recreation-related potential and that were authorized pursuant to Public Law 83–566, as amended.

SEC. 208. Subsection (a) of section 134 of Public Law 94–587 is amended to read as follows:

"(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed within ninety days after enactment of the Water Resources Development

Act of 1983 to institute a procedure enabling the engineer officer in charge of each district under the direction of the Chief of Engineers to certify, at the request of local interests, that particular local improvements for flood control can reasonably be expected to be compatible with a specific, potential project then under study or other form of consideration. Such certification shall be interpreted to assure interests that they may go forward to construct such compatible improvements at local expense with the understanding that such improvements can be reasonably expected to be included within the scope of the Federal project, if later authorized, both for the purposes of analyzing the cost and benefits of the project and assessing the local participation in the costs of such project.".

SEC. 209. (a) The Secretary shall undertake a program of research for the control of river ice, and to assist communities in breaking up such ice, which otherwise is likely to cause or aggravate flood damage or severe streambank erosion.

(b) The Secretary is further authorized to provide technical assistance to local units of government to implement local plans to control or break up river ice. As part of such authority, the Secretary shall acquire necessary ice-control or ice-breaking equipment, which shall be loaned to local units of government together with operating assistance, where appropriate.

(c) For the purposes of subsections (a) and (b) of this section, the sum of $5,000,000 is authorized to be appropriated to the Secretary in each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

(d) To further implement the purposes of this section, the Secretary is authorized and directed to undertake a demonstration program of new and innovative techniques and activities for the control of river ice at Hardwick, Vermont. Such program shall be designed to minimize the danger of wintertime flooding in the vicinity of such community. For the purposes of this subsection, the sum of $250,000 is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, such sum to remain available until expended.

(e) No later than March 1, 1988, the Secretary shall report to the Congress on activities under this section.

SEC. 210. (a) The Secretary shall, upon the request of local public officials, survey the potential and methods for rehabilitating former industrial sites, millraces, and similar types of facilities already constructed for use as hydroelectric facilities. The Secretary shall, upon request, provide technical assistance to local public agencies, including electric cooperatives, in designing projects to rehabilitate sites that have been surveyed, or are qualified for survey, under this section.

(b) There is authorized to be appropriated to the Secretary, to implement this section, the sum of $5,000,000 for each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

SEC. 211. Section 221(b) of the Flood Control Act of 1970 (Public Law 91–611) is amended by deleting the period at the end thereof, inserting a colon, and adding the following: "Provided, That where the non-Federal interest is the State itself, the agreement may reflect that it does not obligate future legislative appropriations or other funds for such performance and payment when obligating future appropriations or other funds would be inconsistent with State constitutional limitations.".

SEC. 212. Notwithstanding any other provision of law, construction on any project, or separable element thereof, authorized in this Act and under the responsibility of the Secretary shall not commence until the project has been studied by the Chief of Engineers and reported favorably thereon.

SEC. 213. Subject to the provisions and requirements of title VI of this Act, the sums to be obligated for any project authorized by this Act shall not exceed the sum listed in this Act for the specific project, as of the month and year listed for such project (or, if no date is listed, the cost shall be considered to be as of the date of the enactment of this Act), plus *such amounts, if any, as may be justified solely by reason of increases in construction costs, as determined by engineering cost indices applicable to the type of construction involved, and by reason of increases in land costs.*

SEC. 214. The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

SEC. 215. (a) The Secretary may enter into a contract providing for the recovery of an appropriate share of the costs of a project under his responsibility with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of such project. The Federal Project Repayment District shall include lands and improvements which receive identifiable benefits from the construction or operation of such project. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall include the power to collect a portion of the transfer price from any transaction involving the sale, trans-

fer, or change in beneficial ownership of lands and improvements within the district boundaries.

(b) Cost recovery pursuant to the provisions of this section shall be deemed to meet cost recovery requirements of other provisions of Federal law if the economic study required by subsection (c) of this section demonstrates that income to the Federal Government equals or exceeds that required over the term of repayment required by that cost recovery provision.

(c) Prior to execution of an agreement pursuant to subsection (a) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section, or an agreement with a Federal Project Repayment District, will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law.

SEC. 216. Section 202 of the Flood Control Act of 1968 (Public Law 90–483) shall apply to all projects authorized by this Act.

SEC. 217. It is the sense of the Congress that the parties to various lawsuits that have been filed concerning the **[***issuance of Federal permits for the use of Missouri River water in a coal slurry pipeline development should work to***]** ***issuance of Federal permits necessary for the con-***

struction of a coal slurry pipeline development which would use Missouri River water, should work to *conclude such suits as expeditiously as possible consistent with the rights and interests of all the parties, and that all parties to such suits should act in a fair and reasonable manner.*

SEC. 218. (a) Notwithstanding any other provision of law, the Secretary shall not initiate the construction of any water resources project, or separable element thereof, if such project has been modified to increase any of the following project parameters by more than 25 per centum:

(1) acreage of land acquisition;

(2) linear miles of stream channel inundated;

(3) width or depth of any navigation channel;

(4) displacement of dwelling units;

(5) hydroelectric generating capacity; or

(6) linear miles of stream channelization.

(b) Not later than one hundred and eighty days after a water resources project is proposed by the Secretary to be modified in excess of the limitation described in subsection (a) of this section, the Secretary shall prepare and transmit to Congress a report identifying such project and describing the extent of the proposed modification, together with his recommendations thereon, accompanied by the views of other appropriate Federal and non-Federal agencies.

SEC. 219. (a) The Congress finds that—

(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the six States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, and Texas;

(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 per centum of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 per centum of the value of livestock raised in the United States; and

(3) annual precipitation in the High Plains region ranges from fifteen to twenty-two inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

(1) plan for the development of an adequate supply of water in the region;

(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

(3) examine alternatives for the development of an adequate supply of water for the region; and

(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

(c) The Water Research and Development Act of 1978 (Public Law 95–467) is amended by adding at the end thereof the following new title:

"TITLE V—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

"SEC. 501. (a) There is hereby established the High Plains Study Council composed of—

"(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, and Texas, and referred to hereinafter in this title as the 'High Plains region'), or a designee of the Governor;

"(2) a representative of the Department of Agriculture; and

"(3) a representative of the Secretary.

"(b) The Council established pursuant to this section shall—

"(1) review research work being performed by each State committee established under section 502 of this Act; and

"(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

"SEC. 502. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the 'State committee'). Each State committee shall be composed of no more than seven members, including—

"(1) a representative of the United States Department of Agriculture;

"(2) a representative of the Secretary; and

"(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act), and others with a special interest or expertise in water resources.

"(b) The State committee established pursuant to subsection (a) of this section shall—

"(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

"(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

"(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

"(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

"SEC. 503. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

"(1) water-use efficiency;

"(2) cultural methods;

"(3) irrigation technologies;

"(4) water-efficient crops; and

"(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section, an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"SEC. 504. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

"(1) precipitation management;

"(2) weather modification;

"(3) aquifer recharge opportunities;

"(4) saline water uses;

"(5) desalinization technologies;

"(6) salt tolerant crops; and

"(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education *shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.*

"SEC. 505. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

"(1) water-efficient irrigation technologies and practices;

"(2) soil and water conservation management systems; and

"(3) the growing and marketing of more waterefficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 per centum of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

"SEC. 506. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report annually to Congress.

"SEC. 507. Not later than one year after the date of enactment of this title, and at intervals of one year thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title.

"SEC. 508. (a) For each of the fiscal years ending September 30, 1985, through September 30, 1989, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

"(1) $500,000 for the purposes of section 502;

"(2) $6,000,000 for the purposes of section 503;

"(3) $2,000,000 for the purposes of section 504;

"(4) $2,000,000 for the purposes of section 505; and

"(5) $500,000 for the purposes of section 506.

"(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.".

SEC. 220. (a) The Secretary is authorized to make grants to States for the establishment and operation of pro-

grams to promote water conservation and nonstructural flood control alternatives. To qualify to receive such a grant, a State shall establish or augment an office and program to—

(1) publicize the range of nonstructural flood control methods, including, but not limited to, flood-proofing of structures, flood plain management, greenbelts along rivers and streams, protection of upstream wetland or recharge areas, relocation of structures out of the flood plain, and flood warning systems; and

(2) promote increased efficiency of water-use in the municipal, industrial, and agricultural sectors by publicizing the range of methods which help save water such as water-saving plumbing fixtures, revised rate structures, plumbing code alterations, outdoor water-use plans, innovative landscaping, recycling techniques, and other measures.

(b) Funds provided under this section shall not be used to develop or implement plans for dams, stream channelization or dredging, or any other structural measures for river control.

(c)(1) For the purposes of this section, the word "States" includes Puerto Rico and the District of Columbia.

(2) For the purposes of this section, there is authorized to be appropriated to the Secretary, for distribution equally among the States, the sum of $50,000,000 for each of the

fiscal years ending September 30, 1985, through the fiscal year ending September 30, 1989.

(d) The Secretary, not later than October 1, 1987, shall report to the Congress on activities undertaken under this section.

SEC. 221. (a) The Congress finds that increasing scientific evidence indicates the level of the oceans will rise significantly over the next seventy-five years.

(b) The Secretary, in cooperation with the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, and other appropriate Federal, State, and local agencies and the private sector, is authorized to conduct a study of shoreline protection and beach erosion control policy and related projects of the Secretary, in view of the prospect for long-term increases in the levels of the ocean. Such study shall include, but is not limited to—

(1) an assessment of the probability and the extent of coastal flooding and erosion;

(2) an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion;

(3) a summary of the legal and institutional impact of rising sea level on riparian lands; and,

(4) recommendations for new or additional criteria for Federal participation in shoreline protection projects.

(c) Within three years after the date of enactment of this Act, the Secretary shall transmit the study prepared pursuant to subsection (b) of this section, together with supporting documentation and the recommendations of the Secretary on such study, to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(d) For the purposes of this section, there is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, the sum of $3,000,000, such sum to remain available until expended.

SEC. 222. During the design of each water resources project which has a cost in excess of $10,000,000 and which was authorized prior to, in, or subsequent to this Act and undertaken by the Secretary, on which construction has not been initiated as of the date of enactment of this Act, the Secretary shall require a review of the cost effectiveness of such design. The review shall employ cost control techniques which will ensure that such project is designed in the most cost-effective way for the life of the project.

SEC. 223. (a) In the case of any water resources preauthorization study undertaken by the Secretary, the Sec-

retary shall prepare a feasibility report. Such feasibility report shall describe, for each alternative analyzed, the national economic development benefits and costs, the environmental quality impacts, and other impacts of concern to Federal, State, local, and international entities. The feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan. This subsection shall not apply to any study with respect to which a report has been submitted to Congress before the date of enactment of this Act, or authorized in this Act.

(b) Before initiating any feasibility study under subsection (a) of this section, if such study had not been initiated prior to enactment of this Act, the Secretary shall first perform, at full Federal expense, a reconnaissance of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance shall include a preliminary analysis of the Federal interest, costs, benefits, environmental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.

(c)(1) The Secretary shall not initiate any feasibility study after the date of enactment of this Act until appropriate non-Federal interests agree, by contract, to contribute 50 per centum of the cost for such study during the period of such study. Not more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

SEC. 224. (a)(1) In the case of any water resources project authorized to be constructed by the Secretary in this Act, or authorized to be constructed by the Secretary prior or subsequent to the date of enactment of this Act, construction of which has not commenced as of the date of enactment of this Act, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests, (1) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or (2) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes *(other than mitigation of fish and wildlife losses), whichever the Secretary determines is appropriate.*

(2) For the purposes of this subsection, any project on which more than 50 per centum of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b)(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed, to the extent that such mitigation features cost no more than $7,500,000 per project. Such mitigation may include the acquisition of lands or water, or interests therein, provided that acquisition under this paragraph shall not be by condemnation in the case of projects completed as of the date of enactment of this Act or on which at least 10 per centum of the physical construction on the project has been completed as of the date of enactment of this Act.

(2) Whenever after his review the Secretary determines that such mitigation features under this subsection are anticipated to cost more than $7,500,000 per project or costs less than $7,500,000 per project and are likely to require condemnation under the proviso in paragraph (1) of this subsec-

tion, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) Costs incurred to mitigate damages to fish and wildlife under the terms of this section shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost-sharing or reimbursement to the same extent as such other project costs are shared or reimbursed: Provided, however, That when such costs are covered by contracts entered into prior to the date of enactment of this Act, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) After the date of enactment of this Act, the Secretary shall not submit any proposal for the authorization of any water resources project to the Congress unless such report contains (1) a recommendation with a specific plan to mitigate fish and wildlife losses created by such project, or (2) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(e) In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the costs of such enhancement shall be a

Federal cost when such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, anadromous fish, or when such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.). When benefits of enhancement do not qualify under the preceding sentence, 25 per centum of such enhancement costs shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary, except that when benefits are limited to a single State, such non-Federal interests shall provide 33⅓ per centum of such costs.

(f) The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act, and nothing herein is intended to affect that Act.

SEC. 225. (a)(1) The Secretary is authorized to plan, design, and construct streambank erosion control projects not specifically authorized by Congress when, in the opinion of the Secretary, such work is economically feasible and environmentally acceptable. Prior to construction of any projects *for this purpose, non-Federal interests shall agree to provide, without cost to the United States, all lands, easements, and rights-of-way necessary for construction and subsequent operation of the project; hold and save the United States free from damages due to construction, operation, and maintenance of the project except damages due to the fault or negligence of the United States or its contractors; and operate and maintain the project upon completion.*

(2) For the purposes of this section, the sum of $15,000,000 is authorized to be appropriated to the Secretary for each of the fiscal years beginning with the fiscal year ending September 30, 1985. Not more than $2,000,000 shall be allotted for the construction of a project under this section at any single locality and such amount shall be sufficient to complete Federal participation in the project.

TITLE III—PROJECT PROVISIONS

SEC. 301. (a) The Secretary is authorized and directed to take, at a cost of $4,117,991, and substantially in accordance with the study directed by the District Engineer and dated July 20, 1981, such action as may be necessary to correct erosion problems along the banks of the Warrior River in order to protect Mound State Park, near Moundville, Alabama.

(b) The Secretary is authorized to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi

Indian Mound in the county of Elmore, Alabama, by instituting bank stabilization measures at a cost of $15,400,000.

(c) The Secretary in order to protect the cultural, economic, environmental, and historical resources of Tangier Island, Virginia, located in Chesapeake Bay, is authorized and directed to design and construct a structure approximately eight thousand two hundred feet in length on the western shore of Tangier Island, adequate to protect such island from further erosion at a cost of $5,400,000.

(d) Prior to any construction under this section, non-Federal interests shall provide without cost to the United States all necessary lands, easements, rights-of-way, and relocations, agree to operate and maintain the structures after construction, and hold and save the United States free from damages due to the construction works.

(e) Notwithstanding the provisions of this section, the Secretary shall give priority in the allocation of funds for design and construction of projects for the purposes of erosion control to projects authorized prior to the enactment of this Act.

SEC. 302. The Secretary is authorized and directed to relocate the site of disposal for dredge spoil from the Christina River in Wilmington, Delaware, from the current location at Cherry Island to a site on the Delaware River between the Wilmington Marine Terminal and Pigeon Point.

Sec. 303. (a) The Secretary is authorized to construct, at Federal expense, a set of emergency gates in the conduit of the Abiquiu Dam, New Mexico, to increase safety and enhance flood and sediment control: Provided, That such feature, which was eliminated during original construction due to cost constraints, shall be considered as completing the original design concept for the project.

(b) For purposes of this section, the sum of $2,500,000 is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, such sums to remain available until expended.

Sec. 304. The Secretary shall promptly transfer to the responsibility of the Corps of Engineers district engineer in Albuquerque, New Mexico, those portions of the State of New Mexico that, as of the date of enactment of this Act, were under the responsibility of the subdistrict engineers in Sacramento, California, and Los Angeles, California.

Sec. 305. The Richard B. Russell Dam and Lake project, authorized by the Flood Control Act of 1966 (80 Stat. 1420), is hereby modified to authorize the Secretary to provide such power to the city of Abbeville, South Carolina, as the Secretary determines to be necessary to mitigate the reduction in hydroelectric power produced at the city-owned hydroelectric plant at Lake Secession caused by the construction and operation of the Russell Dam and Lake project.

Such power shall be provided to the city for a period not to exceed the remaining service life of the city-owned hydroelectric plant as part of the operational requirements and costs of the project under such terms and conditions as the Secretary, in consultation with the Secretary of Energy, determines to be appropriate. The Secretary of Energy is authorized to provide assistance in the delivery of such power.

SEC. 306. The Waterbury, Vermont, project in the Winooski River Basin, authorized for modification in section 10 of the 1944 Flood Control Act, approved as Public Law 78–534 of December 22, 1944, is hereby further modified to provide that any major rehabilitation of such project to terminate abnormal seepage through or under the dam and to restore the concrete work on such dam shall be undertaken by the Secretary. Nothing in this section shall be construed as altering the conditions established in the Federal Power Commission license numbered 2090, issued on September 16, 1954.

SEC. 307. The city waterway navigation channel project, Tacoma Harbor, Washington, authorized by the first section of the River and Harbor Act of June 13, 1902 (32 Stat. 347), is hereby modified to direct the Secretary to redefine the boundaries of such project in accordance with the recommendations contained in appendix B of the feasibility *report of the Seattle District Engineer, dated November 1981.*

SEC. 308. (a) The Secretary in cooperation with the governments of the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands, is hereby authorized and directed to study and draft plans for development, utilization, and conservation of water and related land resources of such territory and Commonwealth.

(b) Studies authorized by this section shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreational facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environment improvement and economic and human resources development. Such studies shall also be compatible with comprehensive development plans formulated by local planning agencies and other interested Federal agencies.

(c) There is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, a sum of $500,000 to carry out the provisions of this section.

SEC. 309. The second paragraph under the center heading "BRAZOS RIVER BASIN" in section 10 of the Flood Con-

trol Act of 1946 (60 Stat. 641) is amended by inserting "or water supply" after "irrigation".

SEC. 310. The Pick-Sloan Missouri Basin program shall be prosecuted, as authorized and in accordance with applicable laws including the requirements for economic feasibility, to its ultimate development on an equitable basis as rapidly as may be practicable, within the limits of available funds and the cost recovery and repayment principles established by Senate Report Numbered 470 and House of Representatives Report Numbered 282, Eighty-ninth Congress, first session.

SEC. 311. The project for Jackson Hole Snake River local protection and levees, Wyoming, authorized by the River and Harbors Act of 1950 (Public Law 81–516), is hereby modified to provide that the operation and maintenance of the project, and additions and modifications thereto constructed by non-Federal interests, shall be the responsibility of the Secretary: Provided, That non-Federal interests shall pay the initial $35,000 in cash or materials, of any such cost expended in any one year.

SEC. 312. The project for flood protection for the Rio Grande Floodway, Truth or Consequences Unit, New Mexico, authorized by the Flood Control Acts of 1948 and 1950, is hereby modified to provide that the Secretary is authorized to construct a flood control dam on Cuchillo Negro

Creek, a tributary of the Rio Grande, in lieu of the authorized floodway.

SEC. 313. (a)(1) The Congress finds that the irrigation ditch systems in New Mexico, known as the Acequia Systems, date from the eighteenth century, and that these early engineering works have significance in the settlement and development of the western portion of the United States.

(2) The Congress, therefore, declares that the restoration and preservation of the Acequia Systems has cultural and historic values, as well as economic values, to the region.

(b) The Secretary is authorized and directed to undertake, without regard to economic analysis, such measures as are necessary to protect and restore the river diversion structures and associated canals attendant to the operations of the community ditch and Acequia Systems in New Mexico that are declared to be a political subdivision of the State of New Mexico: Provided, That the State of New Mexico, or other non-Federal interests, shall pay 20 per centum of the cost of any work undertaken under this section.

(c) For the fiscal year ending September 30, 1985, and thereafter, the sum of $40,000,000 is authorized to be appropriated for the purposes of subsection (b) of this section, such sums to remain available until expended.

(d) The Secretary is further authorized and directed to consider the historic Acequia Systems (community ditches) of

the Southwestern United States as public entities, if these systems are chartered by the respective State laws as political subdivisions of that State. This public entity status will allow the officials of these Acequia Systems to enter into agreements and serve as local sponsors of water-related projects of the Secretary.

SEC. 314. (a) The Secretary is authorized to implement a program of research in order to demonstrate the cropland irrigation and conservation techniques described in the report issued by the New England Division Engineer, dated May 1980, for the Saint John River Basin, Maine.

(b) For the purposes of this section, there is authorized to be appropriated to the Secretary the sums of $1,825,000 in the fiscal year ending September 30, 1985, $820,000 in the fiscal year ending September 30, 1986, and $785,000 for the fiscal year ending September 30, 1987, such sums to remain available until expended.

SEC. 315. (a) Bank protection activities conducted under the Rio Grande Bank protection project pursuant to the Act of April 25, 1945 (59 Stat. 89), may be undertaken in Starr County, Texas, notwithstanding any provision of such Act establishing the counties in which such bank protection activities may be undertaken.

(b) Any bank protection activity undertaken in Starr County, Texas, pursuant to subsection (a) of this section shall be—

(1) in accordance with such specifications as may be prepared for such purpose by the International Boundary and Water Commission, United States and Mexico; and

(2) except as provided in subsection (a) of this section, subject to the terms and conditions generally applicable to activities conducted under the Rio Grande Bank protection project.

SEC. 316. (a) The Secretary, upon completion of any necessary recordation of the survey and/or plat of each townsite specified under this section, is authorized to—

(1) sell those lands and improvements in each townsite which are suitable for residential, commercial, or industrial use, all in accordance with the provisions of subsection (b) of this section.

(2) transfer, without cost, municipal facilities to the appropriate local government entity or entities; and

(3) transfer, without cost, all school buildings, facilities, related equipment, and land used for educational purposes to the appropriate school district.

(b)(1) All property authorized to be sold, at fair market value, under this section shall be offered for sale in accordance with the following:

(A) First preference shall be given to residents of improved residential properties within a townsite or to an operator of a commercial concession within a townsite for a period of thirty days to purchase the property in which they so reside or operate.

(B) In lieu thereof, said resident or operator shall have the preference, denoted as the second preference, to purchase another available improved residential or commercial lot, or an unimproved residential or commercial lot, in the same townsite for a period of thirty days which may, in the discretion of the Secretary, run concurrently with that in (A) above.

(C) Thereafter, for a period of thirty days, a preference, denoted the third preference, to purchase an available residential lot, improved or unimproved, shall be given, without difference or distinction, to project-connected employees who are eligible to be tenants of Federal housing in a townsite, to any public employees who work in a townsite, and to retired employees or their surviving spouses who, during their years of employment, lived in one of the townsites.

(D) Subsequent thereto, for an additional thirty-day period, a preference, denoted the fourth preference, to purchase improved residential property in a townsite shall be given to any person, corporation or agency agreeing to lease said property to a person or persons who has elected not to exercise a preference to purchase property under (A) or (B) above.

(E) After all preference rights have expired, the remaining property which, in the judgment of the Secretary, is suitable for development, shall be offered for sale to the public.

(F) The Secretary is further authorized to transfer, without cost, to a local government entity or entities any property not purchased under the preference rights set forth in subparagraphs (A) through (E) of this paragraph and any other remaining property within the townsite boundaries.

(2) The purchase of property pursuant to the first, second, or third preference right under subsection (b)(1) of this section shall render the purchaser and his/her spouse ineligible to purchase any other property under such preferences.

(c) When financing for purchasers of residential property under subsections (b)(1)(A) through (b)(1)(E) cannot reasonably be obtained from other sources, the Secretary may

accept, in partial payment of the purchase price of the residential property, notes secured by mortgages on the property, subject to such terms and conditions as he determines appropriate: Provided, That the interest rate charged to the purchasers will not be more favorable than that then being charged by the Farmers Home Administration for its single family rural housing loan program. The Secretary may sell such notes and transfer, assign, or convey the mortgages securing such notes on terms that he deems appropriate.

(d) The Secretary is further authorized to provide temporary financial assistance to the appropriate local government entity or entities for the townsites specified in this section for a period of five years, in amounts equal to the following percentages of the entity's budget for operating expenses:

First year—100 per centum;
Second year—80 per centum;
Third year—60 per centum;
Fourth year—40 per centum; and
Fifth year—20 per centum.

(e) The Secretary is hereby authorized to perform those acts necessary to delegate authority, to prescribe such rules and regulations, and to establish such terms and conditions as he may deem appropriate for the purpose of carrying out the provisions and objectives of this section.

(f)(1) For the purposes of this section "townsite" means:

(A) The area referred to as Fort Peck, Montana, containing five hundred and seventy-one acres, more or less, as depicted on drawing numbered MFP118–2E1, dated October 15, 1981, on file in the office of the district engineer, United States Army Engineer District, Omaha, Nebraska.

(B) The area referred to as Riverdale, North Dakota, containing eight hundred and ninety-two acres, more or less, as depicted on drawing numbered MGR160–2E1, dated November 10, 1981, on file in the office of the district engineer, United States Army Engineer District, Omaha, Nebraska.

(C) The area referred to as Pickstown, South Dakota, containing three hundred and ninety-three acres, more or less, as depicted on drawing numbered MR315–2E1, dated November 3, 1981, on file in the office of the district engineer, United States Army Engineer District, Omaha, Nebraska.

(2) For the purposes of this section, the terms:

(A) "Local government entity" shall mean any public or quasi-public organization, including an incorporated municipality, that in the judgment of the Secretary would be able to provide any or all of those public facilities or services esssential to the operation of the townsite.

(B) "Municipal facilities" shall include fire and police protection systems, waste treatment plants, water treatment and distribution facilities, parks, streets and roads, cemetaries, power distribution systems, municipal government buildings, and other property suitable for use for local municipal purposes, together with underlying lands, easements, and rights-of-way, as well as equipment, materials, and supplies therefor.

SEC. 317. (a)(1) To improve water quality and fulfill the goals of the clean lakes program established in section 314 of the Clean Water Act, the Secretary is authorized to initiate a demonstration program to remove excess silt from Lake Herman, Lake County, South Dakota.

(2) For the purpose of this subsection, there is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, the sum of $5,000,000, such sum to remain available until expended.

(b) The Secretary is authorized and directed to undertake a demonstration project for the removal of silt and aquatic growth, in Lake Worth, Tarrant County, Texas, to construct silt traps and to provide other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth, and to use the dredged material in the reclamation of despoiled land, and other actions necessary to the success of

the demonstration, all at full Federal expense and at a cost of $1,750,000 (October 1983).

(c) The Secretary is authorized and directed to conduct mitigation activities recommended in the 1982 Environmental Protection Agency Diagnostic Feasibility Study for Gorton's Pond in Warwick, Rhode Island. Activities will include the installation of retention basins, the dredging of inlets and outlets in recommended areas and the disposal of dredge material, and weed harvesting and nutrient inactivation. For purposes of this subsection, there is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1985, or thereafter, the sum of $730,000, such sum to remain available until expended.

SEC. 318. (a) The Secretary, after consultation with the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other appropriate governmental agencies, and the National Research Council of the National Academy of Sciences, is authorized and directed to undertake studies to identify the impacts on the United States of potential Canadian tidal power development in the Bay of Fundy, and submit such studies to the appropriate committees of the Congress.

(b) The Secretary shall conduct the studies authorized in subsection (a) of this section in two phases:

(1) Studies to be completed not later than October 1, 1985, to (A) identify effects of any such projects on tidal ranges and resulting impacts to beaches and estuarine areas, and (B) identify further studies which would be needed to meet the requirements of paragraph (2) of this subsection; and

(2) Studies to be completed not later than October 1, 1988, to (A) determine further environmental, social, economic, and institutional impacts of such tidal power development, and (B) determine what measures could be taken in Canada and the United States to offset or minimize any adverse impacts of such development on the United States.

(c) In the fiscal year ending September 30, 1985, or in any fiscal year thereafter, there is authorized to be appropriated to the Secretary the sum of $1,100,000 for the purposes of subsection (b)(1) of this section, and the sum of $8,900,000 for the purposes of subsection (b)(2) of this section, such sums to remain available until expended.

SEC. 319. (a)(1) Downstream recreation on the Gauley River is declared to be an additional project purpose of the Summerville Lake project, West Virginia, under the direction of the Secretary. Releases at times and levels (minimum two thousand four hundred cubic feet per second) suitable for such recreation shall commence on the first weekend after

Labor Day of each year and continue during each weekend thereafter (and during such weekday periods as the Secretary finds appropriate) for approximately five weeks.

(2) Releases shall also be made at other times during the year as appropriate: Provided, That such releases are not injurious to other purposes of the Summerville Lake project. The Secretary shall schedule such releases as early as practical and provide adequate advance public notice of such whitewater release.

(b) The Secretary may temporarily suspend (for such period as may be necessary) or modify any release required under subsection (a)(1) of this section or scheduled under subsection (a)(2) of this section when necessary for purposes of flood control or any other project purpose, or for reasons of public health and safety.

SEC. 320. The three flood water control structures on the Johns Creek tributary and the program of land treatment for erosion and sediment control in the Nonconnah Creek Basin, Tennessee, are authorized to be constructed in accordance with the recommendations contained in the joint report of the district engineer and the State conservationist contained in Senate Document 95–96, at a Federal cost of $16,663,300 (June, 1981).

SEC. 321. Subject to the provisions of section 212 of this Act, the Secretary is authorized to participate with ap-

propriate non-Federal sponsors in a project to demonstrate, on an expedited basis, the feasibility of non-Federal cost sharing for rural flood protection under the provisions of sections 208 and 215 and title VI of this Act. Such project shall consist of channel restoration and improvements on the James River in South Dakota, and may include consideration of offstream storage, small impoundments on tributaries, and other features identified by the Secretary to alleviate flood damage and to regulate flows on such river, at a Federal cost not to exceed $20,000,000: Provided, That the Secretary shall report to Congress no later than September 30, 1985, on the extent to which additional features may be required to alleviate flood damage and regulate flows on such river.

SEC. 322. The last sentence under the center heading "ARKANSAS-RED RIVER BASIN" in section 201 of the Flood Control Act of 1970 (84 Stat. 1825) is amended to read as follows: "Construction shall be initiated in the Red River Basin in accordance with the recommendations regarding General Design Memorandum numbered 25 by the Director of Civil Works on behalf of the Chief of Engineers dated August 8, 1977.".

SEC. 323. The project on Milk River for local flood protection at Havre, Montana, authorized by section 10 of the Flood Control Act approved December 22, 1944 (58 Stat.

897), is hereby modified to authorize the Secretary to reconstruct or replace, whichever he determines necessary and appropriate, the water supply intake weir of the city of Havre, Montana, at a cost of $1,400,000.

SEC. 324. (a) The Secretary is authorized, with the concurrence of the Director of the National Park Service and the South Florida Water Management District, to modify the schedule for delivery of water from the central and southern Florida project to the Everglades National Park required by section 2 of the River Basin Monetary Authorization and Miscellaneous Civil Works Amendments Act of 1970 (Public Law 91–282) and to conduct an experimental program for the delivery of water to the Everglades National Park from such project for the purpose of determining an improved schedule for such delivery.

(b) To further implement the purposes of this section, the Secretary is authorized to construct necessary flood protection measures for protection of homes in the area affected by any modification of such delivery schedule, at a cost of $10,000,000.

SEC. 325. The Secretary is authorized and directed to improve public access to, and lessen a health and safety hazard, at Pearson-Skubitz Big Hill Lake, Kansas, by upgrading existing roads to the extent feasible and acquiring *additional rights-of-way and constructing new roads as required, at a cost of $1,800,000 (October 1983).*

SEC. 326. That portion of the Hudson River in the New York Bay lying within the area described in the accompanying report to this section, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and the laws of the United States.

SEC. 327. (a) The portion of the flood control project for the Illinois River and tributaries, Illinois, Wisconsin, and Indiana, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1189) which is to be located on the Sangamon River, Illinois, about one mile upstream from Decatur, Illinois, and which is known as the William L. Springer Lake project is not authorized after the date of enactment of this Act.

(b) Notwithstanding section 203 of the Federal Property and Administrative Services Act of 1949 and any other provision of law, before any lands acquired by the United States for the William L. Springer Lake project referred to in subsection (a) of this section are sold or otherwise disposed of or used for any purpose other than to carry out such project, such lands shall first be made available for purchase by the city of Decatur, Illinois, at the price at which such lands were acquired by the United States: Provided, That such lands remain in public ownership for use for public purposes,

and that if any of such lands are not so owned or used, then such lands shall revest in the United States.

SEC. 328. The Big South Fork National River and Recreation Area, Tennessee and Kentucky, established pursuant to section 108 of the Water Resources Development Act of 1974 (Public Law 93–251), as amended, shall hereafter be known and designated as the "John Sherman Cooper National Recreation Area." Any reference in any law, map, regulation, document, record, or other paper of the United States to such recreation area shall be deemed to be a reference to such area as the "John Sherman Cooper National Recreation Area."

SEC. 329. For purposes of the Act entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes", approved June 21, 1940 (33 U.S.C. 551 et seq.), the Port of Houston Authority bridge over Greens Bayou approximately two and eight-tenth miles upstream of the confluence of Greens Bayou, Texas, and the Houston Ship Channel is hereby declared to be a lawful bridge for all purposes of such Act. The Secretary of Transportation is authorized to reimburse the bridge owner for work done prior to the date of enactment of this section which work, under the Act of June 21, 1940 (33 U.S.C. 511 *et seq.), would be the responsibility of the United States if performed after the date of enactment of this section: Provided, That any reimbursement under this section shall not exceed $450,000.*

SEC. 330. (a) The Secretary is authorized to undertake the following reconaissance studies in the State of Utah in order to determine if improvements for the purposes of flood control and related purposes are economically and environmentally justified, then report on such studies to Congress:

(1) the Provo River, from the mouth of Provo Canyon to Utah Lake;

(2) the existing levees along Utah Lake from the Provo River south along Interstate Highway 15;

(3) Interstate Highway 15, adjacent to Utah Lake;

(4) Rock, Litte Rock, and Slate Canyons in the city of Provo;

(5) the Bear River, its tributaries and outlets;

(6) the Weber River, its tributaries and outlets; and

(7) the Sevier River, its tributaries and outlets.

(b) For the purposes of this section, the sum of $1,600,000 is authorized to be appropriated to the Secretary.

SEC. 331. Upon the request of the State of Illinois, the Secretary shall amend the contract between the State of Illi-

nois and the United States for use of storage space for water supply in Rend Lake on the Big Muddy River in Illinois to relieve the State of Illinois of the requirement to make annual payments for that portion of the maintenance and operation costs applicable to future water supply as is consistent with the Water Supply Act of 1958 (Public Law 85–500), until such time and in such proportion as the storage is used for water supply purposes.

SEC. 332. In addition to amounts authorized to be appropriated to carry out agreements entered into by the Secretary with the State of Illinois pursuant to Section 110 of the River and Harbor Act of 1958 relating to the repair and modification of the Illinois and Mississippi Canal (Hennepin Canal), there is authorized to be appropriated to the Secretary not to exceed $15,000,000 to carry out such agreements.

SEC. 333. The Lowndesville Recreation Area, located within the Richard B. Russell Dam and Lake project, South Carolina and Georgia, shall hereafter be known and designated as the "Jim Rampey Recreation Area". Any reference in any law, map, regulation, document, record, or other paper of the United States to such recreation area shall be deemed to be a reference to such areas as the "Jim Rampey Recreation Area".

TITLE IV—DAM SAFETY

SEC. 401. (a) Section 1 of Public Law 92–367 (86 Stat. 506) is amended by replacing the final period with a comma and inserting the following after the comma: "unless such barrier, due to its location or other physical characteristics, is likely to pose a significant threat to human life or property in the event of its failure.".

(b) Public Law 92–367 is further amended by inserting after section 6 the following sections:

"SEC. 7. There is authorized to be appropriated to the Secretary of the Army, acting through the Chief of Engineers (hereafter in this Act referred to as the 'Secretary'), $15,000,000 for each of the fiscal years ending September 30, 1985, through September 30, 1989. Sums appropriated under this section shall be distributed annually among those States on the following basis: One-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 per centum of the reasonable cost of implementing an approved dam safety program in such State.

"SEC. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall determine that such program includes the following:

"(1) a procedure, whereby, prior to any construction, the plans for any dam will be reviewed to provide reasonable assurance of the safety and integrity of such dam over its intended life;

"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that such dam has been constructed and will be operated in a safe and reasonable manner;

"(3) a procedure to inspect every dam within such State at least once every five years, except that such inspections shall be required at least every three years for any dam the failure of which is likely to result in the loss of human life;

"(4) a procedure for more detailed and frequent safety inspections, when warranted;

"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;

"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or for which failure is imminent together with an identification for those dams where failure could be reasonably expected to endanger human life, of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;

"(7) the State has or can be expected to have the authority to assure that any repairs or other changes needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and

"(8) the State has or can be expected to have authority and necessary emergency funds to make immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.

"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved one hundred and twenty days following its receipt by the Secretary unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.

"(c) Utilizing the expertise of the Board established under section 10 of this Act, the Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Board finds that a State program under this Act has proven inadequate to reasonably protect human life and property, and the Secretary agrees, the Secretary shall revoke approval of such State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.

"SEC. 9. Not later than eighteen months after enactment of the Dam Safety Act of 1983, the Director of the Federal Emergency Management Agency shall report to the Congress on the need for and possible effects of a Federally sponsored program of reinsurance or guarantees of insurance for owners of dams. This report shall include information on a variety of possible Federal reinsurance or guarantees pro-

grams and their cost, possible effects such a program or programs might have on the private reinsurance business, and the number of dam owners possibly affected by such a program.

"SEC. 10. (a) There is authorized to be established a Federal Dam Safety Review Board (hereinafter in this Act referred to as the 'Board'), which shall be responsible for reviewing the procedures and standards utilized in the design and safety analysis of dams constructed and operated under authority of the United States, and to monitor State implementation of this Act. The Board is authorized to hire necessary staff and shall review as expeditiously as possible the plans and specifications on all dams specifically authorized by Congress prior to initiation of construction of such dam, and file an advisory report on the safety of such dam with the appropriate agency, the appropriate State, and the Congress. The Board is authorized to utilize the expertise of other agencies of the United States and to enter into contracts for necessary studies to carry out the requirements for this section. There is authorized to be appropriated to the Board such sums as may be necessary to carry out this section.

"(b) The Board shall also study the need for a Federal loan program to assist the owners of non-Federal dams in rehabilitating such structures for safety deficiencies. This study shall include a quantitative assessment of the availabil-

ity of funds from existing Federal programs and all other sources for dam rehabilitation, a quantitative assessment of the need for such funds, and an analysis of any impediments which are found to the utilization of existing Federal sources of funds for this purpose.

"(c) The Board shall consist of nine members selected for their expertise in dam safety, including one representative each from the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, the Federal Emergency Management Agency, and the Department of Agriculture, plus four members, appointed by the President for periods of four years, on a rotating basis, who are not employees of the United States. At least two members of the Board shall be employees of the States having an approved program under section 8 of this Act. The Chairman of the Board shall be selected from among those members who are not employees of the United States.

"SEC. 11. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials of such State to participate with officials of such agency in all safety inspections of such dam.

"SEC. 12. The Secretary shall, at the request of any State that has or intends to develop a dam safety program

under section 8 of this Act, provide training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1985, and $500,000 during each of fiscal years ending September 30, 1986, through September 30, 1989.

"SEC. 13. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States and the Congress of the results of such research. There is authorized to be appropriated to carry out this section $1,000,000 for each of the fiscal years ending September 30, 1985, through September 30, 1989.

"SEC. 14. The Secretary is authorized to maintain and periodically publish updated information on the inventory of dams authorized in section 5 of this Act. For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary $500,000 for each of the fiscal years ending September 30, 1985, through September 30, 1989.".

SEC. 402. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the

Committee on Public Works and Transportation of the House of Representatives by the Secretary, or the Secretary of Agriculture acting under Public Law 83–566, as amended, which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.

SEC. 403. This title shall be known as the "Dam Safety Act of 1983".

TITLE V—INLAND NAVIGATION

SEC. 501. Notwithstanding any other provision of law, the Secretary shall obligate from sums appropriated no more than $646,000,000 from general revenues and the Inland Waterways Trust Fund, established pursuant to section 203 of Public Law 95–502, for construction, rehabilitation, renovation, operation, and maintenance of the commercial navigational features and components of the inland waterways and harbors of the United States in any fiscal years ending September 30, 1986, through September 30, 1999.

~~*SEC. 502. (a) In addition to sums made available annually under the terms of section 501 of this title, and subject to the provisions of section 503 of this title, the Secretary is authorized to impose, collect, and obligate use charges on the commercial users of the inland waterways and harbors of the United States to the degree necessary for additional construc-*~~

~~tion, rehabilitation, renovation, operation, and maintenance of commercial navigational features and components of the inland waterways and harbors of the United States so they are sufficient to meet the needs of the commercial waterway users, as recommended by the Inland Waterway Users Board, established pursuant to section 503 of this title. Funds under this subsection shall be obligated solely on commercial navigational features and components of the inland waterways and harbors of the United States.~~

~~(b) Nothing in this title shall limit the authority of the Secretary to obligate funds for those features and components on the inland waterways and harbors of the United States that are not commercial navigational features and components.~~

~~(c) For the purpose of this title, the term:~~

~~(1) "inland waterways and harbors of the United States" means those waterways and harbors authorized to be constructed or maintained by the Secretary to depths of fourteen feet or less and utilized for the purposes of commercial navigation, provided that such definition includes on the Columbia River, Oregon and Washington, from Lewiston, Idaho, to the downstream side of Bonneville Lock and Dam; and~~

~~(2) "commercial navigational features and components" means those aspects and expenditures on the~~

~~*inland waterway and harbors of the United States that are designed and utilized for the purposes of commercial navigation, provided that such definition shall include 20 per centum of the annual expenditures attributable to the Mississippi River and Tributaries project.*~~

SEC. 502. (a) No toll, operating charge, or fee may be levied upon, or collected from, any vessel, dredge, or other water craft for passing through any—

(1) lock,

(2) canal,

(3) canalized river, or

(4) other work for the use and benefit of navigation,

that belongs to the United States.

(b) Any proposals or recommendations of the Secretary of the Army or of any other official of the executive branch of the Federal Government relating to the imposition of any fee for the commercial use of harbors, inland waterways, or any work described in subsection (a) shall be submitted by the Secretary of the Army or such official, as the case may be, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) The provisions of this section shall not apply with respect to the Panama Canal.

SEC. 503. (A) THERE IS HEREBY ESTABLISHED AN INLAND WATERWAY USERS BOARD (HEREINAFTER IN THIS TITLE REFERRED TO AS THE "USERS BOARD") COMPOSED OF TWENTY-ONE MEMBERS TO REPRESENT VARIOUS REGIONS OF THE UNITED STATES AND A SPECTRUM OF USERS AND SHIPPERS UTILIZING THE VARIOUS INLAND WATERWAYS AND HARBORS OF THE UNITED STATES FOR COMMERCIAL PURPOSES, SELECTED BY THE SECRETARY FROM AMONG PERSONS RECOMMENDED BY GROUPS AND ORGANIZATIONS REPRESENTING SUCH USERS AND SHIPPERS, WITH DUE CONSIDERATION TO BE GIVEN TO ASSURE A BALANCE BASED ON THE REVENUES GENERATED BY VARIOUS CATEGORIES OF COMMODITIES SHIPPED ON THE WATERWAYS.

(b)(1) The Users Board shall meet at least annually to develop and make recommendations to the Secretary for spending levels on the commercial navigational features and components of the inland waterways and harbors of the United States for the following fiscal year. The User Board shall, by December 1, 1984, and annually thereafter, file a recommendation to the Secretary for obligation levels under the terms of section 502 of this title, and with the Congress.

Such recommendations shall be printed in the Federal Register and transmitted to the President for inclusion with the budget submission for the succeeding fiscal year.

(2) It is the sense of the Congress that the Secretary shall not obligate funds under this title in excess of the levels recommended by the Users Board, nor impose use charges in excess of those needed to fulfill such levels of obligation.

(c) In any fiscal year when the Users Board recommends obligations less than that specified in section 501 of this title, the differential shall be available in any future year for obligation by the Secretary, notwithstanding the provisions of section 501 of this title.

(d) The Secretary, in cooperation with the Users Board, shall report annually to the President and the Congress on the implementation of this title.

SEC. 504. Section 4 of the Act of July 5, 1884 (23 Stat. 147), as amended by the Act of March 3, 1909 (33 U.S.C. 5), is hereby amended to read as follows:

"SEC. 4. The Secretary of the Army, acting through the Chief of Engineers, is authorized to operate, maintain, and keep in repair and rehabilitate any project for the benefit of navigation belonging to the United States or that may be hereafter acquired or constructed: Provided, That whenever, in the judgment of the Secretary of the Army, the condition of any of the aforesaid works is such that its reconstruction

or replacement is essential to efficient and economical maintenance and operation, as herein provided for, and if the cost shall be less than $25,000,000, the Secretary may proceed with such work: Provided further, That the project does not increase the scope or change the location of an existing project: And provided further, That nothing herein contained shall be held to apply to the Panama Canal.".

SEC. 505. The following works of improvement to the inland waterways of the United States are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated: Provided, That the figures listed in this title shall be subject to the limitations provided under section 213 and title VI of this Act.

(1) Helena Harbor, Phillips County, Arkansas: Report of the Chief of Engineers dated October 17, 1980, at a Federal cost of $42,000,000 (October 1982);

(2) White River Navigation to Batesville, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $20,500,000 (October 1982);

(3) Lake Pontchartrain, North Shore, Louisiana: Report of the Chief of Engineers dated February 14, 1979 at a Federal cost of $850,000 (October 1982);

(4) Greenville Harbor, Mississippi: Reports of the Chief of Engineers dated November 15, 1977, and February 22, 1982, at a Federal cost of $27,700,000 (October 1982);

(5) Vicksburg Harbor, Mississippi: Report of the Chief of Engineers dated August 13, 1979, at a Federal cost of $54,700,000 (October 1982);

(6) Atlantic Intracoastal Waterway Bridges, North Carolina: Report of the Chief of Engineers dated October 1, 1975, at a Federal cost of $8,000,000 (October 1982);

(7) Olcott Harbor, New York: Report of the Chief of Engineers dated June 11, 1980, at a Federal cost of $5,320,000 (October 1982);

(8) Bonneville Lock and Dam, Oregon and Washington-Columbia River and Tributaries Interim Report: Reports of the Chief of Engineers dated March 14, 1980, and February 10, 1981, at a Federal cost of $177,000,000 (October 1982);

(9) Memphis Harbor, Memphis, Tennessee: Report of the Chief of Engineers dated February 25,

1981, at a Federal cost of $43,000,000 (October 1982);

(10) Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virignia: Report of the Chief of Engineers dated April 8, 1982, at a Federal cost of $313,000,000 (October 1982);

(11) Lock and Dam 7 Replacement, Monongahela River, Pennsylvania: Report of the Chief of Engineers, dated May 5, 1972, with such modifications (including acquisition of lands for fish and wildlife mitigation) as the Secretary determines are advisable based on the review underway on the date of enactment at a Federal cost of $95,000,000 (October, 1982);

(12) Lock and Dam 8 Replacement, Monongahela River, Pennsylvania: Report of the Chief of Engineers, dated May 5, 1972, with such modifications (including acquisition of lands for fish and wildlife mitigation) as the Secretary determines are advisable, at a Federal cost of $65,000,000 (October, 1982).

SEC. 506. (a) The Secretary is authorized to maintain and rehabilitate the New York State Barge Canal: Provided, however, That the State of New York shall provide one-half of the annual costs to operate and maintain the canal and one-half of the cost to rehabilitate the canal: And provided *further, That control and operation of the canal shall continue to reside with the State of New York.*

(b) For the purposes of this Act, the New York State Barge Canal is defined to be—

(1) the Erie Canal, which connects the Hudson River at Waterford with the Niagara River at Tonawanda;

(2) the Oswego Canal, which connects the Erie Canal at Three Rivers with Lake Ontario at Oswego;

(3) the Champlain Canal, which connects the easterly end of the Erie Canal at Waterford with Lake Champlain at Whitehall; and

(4) the Cayuga and Seneca Canals, which connect the Erie Canal at a point near Montezuma with Cayuga and Seneca Lakes and through Cayuga Lake and Ithaca and through Seneca Lake with Montour Falls.

SEC. 507. (a) To ensure the coordinated development and enhancement of the Upper Mississippi River System, the Congress declares that the purpose of this section is to recognize such System as a nationally significant ecosystem and a nationally significant commercial navigation system. The Congress further recognizes that such System provides a diversity of opportunities and experiences. Such System shall *be administered and regulated in recognition of its several purposes.*

(b) For purposes of this section—

(1) the term "Master Plan" means the Comprehensive Master Plan for the Management of the Upper Mississippi River System, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to the Congress pursuant to the Act entitled "An Act to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax, and for other purposes", approved October 21, 1978 (92 Stat. 1693; Public Law 95–502), hereafter in this Act referred to as the "Act of October 21, 1978"; and

(2) the terms "Upper Mississippi River System" and "System" mean those river reaches having commercial navigation channels on the following rivers: the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; the Black River, Wisconsin; the Saint Croix River, Minnesota and Wisconsin; the Illinois River and Waterway, Illinois; and the Kaskaskia River, Illinois.

(c)(1) The Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi

River System. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(2) Section 101 of the Act of October 21, 1978 is amended by striking out the last two sentences of subsection (b) and the last sentence of subsection (j).

(d)(1) The Congress hereby gives its consent to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements.

(2) Each officer or employee of the United States responsible for management of any part of the System is authorized in accordance with such officer's or employee's legal authority to assist and participate, when requested by any agency established under paragraph (1) of this subsection, in programs or deliberations of such agency.

(e)(1) The Secretary is authorized to provide for the engineering, design, and construction, at a Federal cost of $245,000,000 (October 1982), of a second lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri. Such second lock shall be 110 feet by 600 feet and shall be

constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of the Act of October 21, 1978.

(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

(f)(1) The Secretary, acting in consultation with the Secretary of Transportation and the States in the System, shall monitor traffic movements on the System for the purpose of verifying lock capacity, updating traffic projections, and refining the economic evaluations so as to verify the need for future capacity expansion of the System as well as the future need for river rehabilitation and environmental enhancement.

(2) There are authorized to be appropriated to the Secretary for the first fiscal year beginning after the date of enactment of this Act, and for each of nine fiscal years following thereafter, such sums as may be necessary to carry out paragraph (1) of this subsection.

(g)(1) The Secretary of the Interior, in concert with any appropriate State agency, is authorized to undertake with respect to the Upper Mississippi River System, substantially in accordance with the recommendations of the Master Plan—

(A) a habitat rehabilitation and enhancement program to plan, construct, and evaluate projects to protect, enhance, or rehabilitate aquatic and terrestrial habitats lost or threatened as a result of man-induced activities or natural factors;

(B) the implementation of a long-term resource monitoring program; and

(C) the implementation of a computerized inventory and analysis system.

(2) For the purposes of carrying out subparagraph (g)(1)(A) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $8,200,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed $12,400,000 for the second fiscal year beginning after the date of enactment of this Act, and not to exceed $13,000,000 for each of the succeeding eight fiscal years.

(3) For purposes of carrying out subparagraph (g)(1)(B) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $7,680,000 for the first fiscal year beginning after the date of enactment of this Act and not to exceed $5,080,000 for each of the succeeding nine fiscal years.

(4) For the purposes of carrying out subsection (g)(1)(C), there are authorized to be appropriated to the Secretary of the Interior—

(A) not to exceed $40,000 for the first fiscal year beginning after the date of enactment of this Act;

(B) not to exceed $280,000 for the second fiscal year beginning after the date of enactment of this Act;

(C) not to exceed $1,220,000 for the third fiscal year beginning after the date of enactment of this Act; and

(D) not to exceed $775,000 for each of the succeeding seven fiscal years.

(h)(1) The Secretary of the Interior, in consultation with the Secretary and working through an agency, if any, established by the States for management of the System under subsection (d) of this section, is authorized to implement a program of recreational projects for the System and to conduct an assessment of the economic benefits generated by recreational activities in the System.

(2) For purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $500,000 for each of the first ten fiscal years beginning after the date of enactment of this Act and, for purposes of carrying out the assessment of the eco-

nomic benefits of recreational activities as authorized in paragraph (1) of this subsection, there are authorized to be appropriated to the Secretary of the Interior not to exceed $300,000 for the first and second fiscal years and $150,000 for the third fiscal year beginning after the computerized inventory and analysis system implemented pursuant to subsection (g)(1)(C) of this section is fully functional.

(i) None of the funds appropriated pursuant to the authorization contained in subsections (g) and (h) of this section shall be considered to be attributable to commercial navigation.

(j) This section may be cited as the "Upper Mississippi River System Management Act of 1983".

TITLE VI—COST SHARING

SEC. 601. (a) The construction of any water resource project or related land resources project authorized **to be constructed by the Secretary** *in this Act or* **authorized to be constructed by the Secretary** *after the date of enactment of this Act, excluding any project for the purposes of navigation, shall; except as otherwise provided in this title, be initiated only after the appropriate Federal agency has entered into an agreement with a non-Federal project sponsor to share the costs of construction in accordance with the following guidelines, and agrees to pay, upon completion of project* *construction, 100 per centum of operation, maintenance, and rehabilitation costs:*

"[*(1) hydroelectric power: construction shall not be initiated until the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95–91) determines that the hydroelectric power expected to be generated and not required in the operation of the project can, under the applicable Federal power marketing law, be marketed so that, in addition to 100 per centum of operation, maintenance and replacement costs, 100 per centum of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law) and any other costs assigned in accordance with law for return from power revenues can be returned within the period or periods established for the return of such costs by or pursuant to such applicable Federal power marketing law: Provided, That contracts for the sale of power by the appropriate Power Marketing Administrator may provide for an advance of funds by the purchaser for transfer to the Federal agency constructing the project, and such advances shall be available for construction of the project.*".]

[*(2)*] *(1) municipal and industrial water: 100 per centum;*

[*(3)*] *(2) recreation: 50 per centum of joint and separable costs;*

[*(4)*] *(3) beach erosion control; not less than 50 per centum for publicly owned shores and not less than 100 per centum for privately owned shores within project limits;*

[*(5)*] *(4) urban and rural flood protection, rural drainage, or agricultural water supplies: not less than 35 per centum, or, for projects covered by section 3 of the Flood Control Act of 1936, as amended, the value of lands, easements, right-of-way and relocations required for project construction, whichever is greater, subject to an ability to pay determination under section 603 of this* [*title and in the case of projects for agricultural water supplies, subject to the Reclamation Reform Act, Public Law 97-293.*] ***title: Provided, That, in the case of projects authorized to be constructed in Reclamation States which provide for agricultural water supplies, such projects shall also be subject to Federal reclamation law as amended.***

(b) Any cost-sharing agreement for the construction of any water or related land resources project involving two or

more purposes may provide for an allocation of costs to each purpose which is greater or lesser than the actual costs associated with each purpose, but the total non-Federal contribution for any such multipurpose project shall equal the amount determined by adding together the cost-sharing and repayment requirements calculated under this section for each purpose separately.

SEC. 602. (a) Payment inkind may be accepted for any non-Federal contribution under this Act, except that, notwithstanding any other provision of this Act, 5 per centum of the cost of any project (other than a project or component of a project for commercial [*navigation*] **navigation, agricultural water supplies,** *or hydroelectric power generation) undertaken by the Secretary on which construction is initiated after the date of enactment of this Act shall be paid in cash by the non-Federal project sponsor during construction of such project.*

(b) To the extent that urban and rural flood protection benefits are provided by nonstructural measures, a cash contribution shall not be required of non-Federal project sponsors.

(c) Except as otherwise provided in this title or existing law, the appropriate Federal agency may permit the full non-Federal contribution to be made, without interest, during construction of the project or, with interest, over a period of

not less than thirty years nor more than fifty years from the date of project completion.

(d) Any repayment by any non-Federal sponsor under this section shall include—

(i) the applicable rate of interest, if any, authorized by law for the project, or

(ii) when no other rate is provided by law, the rate of interest determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which funds for the construction of the project are first disbursed.

(e) At the request of any non-Federal private or public sponsor the appropriate Federal agency may permit such non-Federal sponsor to delay the initial payment of any non-Federal contribution under this Act for up to one year after the date when construction is begun on the project for which such contribution is to be made.

(f) At the request of any non-Federal public sponsor, the appropriate Federal agency shall consider a non-Federal contribution of 25 per centum, including not less than 5 per centum in cash, made during construction of the project, to be in fulfillment of section 601(a)(7) of this title.

(g) At the request of any non-Federal public sponsor, the appropriate Federal agency shall consider the cost of work undertaken in accordance with section 134(a) of Public Law 94–587, as amended, by a non-Federal sponsor to be in satisfaction or partial satisfaction of the requirements of subsection (a) of this section if—

(1) the work undertaken has been previously approved by the Division Engineer of the Corps of Engineers; and

(2) the credit sought is only for non-Federal funds expended for such work.

SEC. 603. Any cost-sharing agreement under this Act with a non-Federal private or public sponsor of an urban and rural flood protection, rural drainage, or agricultural water supply project shall be **[***consistent with***]** ***subject to*** *the ability of any such non-Federal sponsor to pay. The ability of any non-Federal sponsor to pay shall be determined by the appropriate Federal agency in accordance with any applicable law or, in the absence of applicable law, under procedure to be determined by the appropriate agency.*

SEC. 604. No additional cost sharing or repayment shall be required from any non-Federal sponsor for any water or related land resources project authorized prior to the date of enactment of this Act beyond any applicable cost-sharing and repayment requirements of existing law, but con-

struction shall be not be initiated prior to the fiscal year ending September 30, 1994, on any such project or separable element thereof unless—

(a) a non-Federal sponsor agrees to pay any cost-sharing and repayment requirements associated with such project under existing law and 50 per centum of any additonal cost-sharing or repayment contributions associated with such project under sections 601 and 602 of this title;

(b) such project is an uncompleted unit (or reformulation of such unit) of a comprehensive river basin program of development to be located in a State in which large acreages of land or volumes of water have been dedicated to such program for the benefit of citizens in other States and thereby denied to the use of the citizens of such State, or

(c) such project is a separable element for which construction funds were appropriated prior to January 1, 1983.

In determining priorities for development among projects authorized for development prior to the date of enactment of this Act, the appropriate Federal agencies shall consult with the States in which such projects are to be located and shall consider any priorities established by any State for the development of such projects.

SEC. 605. After the date of enactment of this Act, the Secretary shall not submit any proposal for the authorization of any water resources project to Congress which has a hydroelectric power component unless such proposal contains comments on the ability of the appropriate Power Marketing Administration to market, under applicable Federal power marketing law, the hydroelectric power expected to be generated by the project but not required for its operation, so as to recover within the periods of time established under applicable law: 100 per centum of the operation, maintenance and replacement costs; 100 per centum of the capital investment allocated to the purpose of hydroelectric power (with interest rates established pursuant to existing law); and any other costs assigned in accordance with applicable law for return from power revenues.

TITLE VII

SEC. 701. The following works of improvement of rivers and harbors and other waterways for flood control and other purposes are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated: Provided, That the figures listed in this title *shall be subject to the limitations provided under section 213 and title VI of this Act:*

(a) Flood Control.—

(1) Village Creek, Jefferson County, Alabama: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $20,700,000 (October 1982);

(2) Eight Mile Creek, Paragould, Arkansas: Report of the Chief of Engineers dated August 10, 1979, at a Federal cost of $14,500,000 (October 1982);

(3) Fourche Bayou Basin, Little Rock, Arkansas: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $19,700,000 (October 1982);

(4) Helena and vicinity, Arkansas: Report of the Chief of Engineers dated June 23, 1983, at a Federal cost of $11,600,000 (October 1982);

(5) Little Colorado River at Holbrook, Arizona: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $7,730,000 (October 1982);

(6) Cache Creek Basin, California: Report of the Chief of Engineers dated April 27, 1981, at a Federal cost of $21,100,000 (October 1982), provided the Secretary acts in coordination with the State of California

to assure that such project poses no danger to any component of its State park system;

(7) Redbank and Fancher Creeks, California: Report of the Chief of Engineers dated May 7, 1981, at a Federal cost of $57,200,000 (October 1982);

(8) Santa Ana River Mainstem, Including Santiago Creek, California: Report of the Chief of Engineers dated January 15, 1982, at a Federal cost of $1,180,000,000 (October 1982): Provided, That construction is restricted to the following elements of the project: improvements at Prado Dam which limit the reservoir taking line to no greater than an elevation of 566 feet; Santa Ana River Channel improvements in Orange County; improvements along Santiago Creek; improvements of the Oak Street Drain; and improvement of the Mill Creek levees; features for mitigation of project effects and preservation of endangered species, and recreation features identified in the Chief of Engineers' Report for these project elements;

(9) Fountain Creek, Pueblo, Colorado, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $6,600,000 (October 1982);

(10) Metropolitan Denver and South Platte River and Tributaries, Colorado, Wyoming, and Nebraska:

Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $9,080,000 (October 1982);

(11) Oates Creek, Georgia: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $8,360,000 (October 1982);

(12) Agana River, Guam: Report of the Chief of Engineers dated March 14, 1977, at a Federal cost of $5,820,000 (October 1982);

(13) Alenaio Stream, Hawaii: Report of the Chief of Engineers dated August 15, 1983, at a Federal cost of $4,579,000 (October 1982).

(14) Big Wood River and Tributaries, Idaho, Interim Report—Little Wood River, Vicinity of Gooding and Shoshone, Idaho: Report of the Chief of Engineers dated November 2, 1977, at a Federal cost of $3,750,000 (October 1982);

(15) North Branch of Chicago River, Illinois: Report of the Division Engineers dated September, 1983, at a Federal cost of $11,209,000 (October 1983), subject to the issuance of a final report by the Chief of Engineers;

(16) Rock River at Rockford and Vicinity, Illinois, Loves Park Interim: Report of the Chief of Engineers dated September 15, 1980, at a Federal cost of $22,800,000 (October 1982);

(17) The project for flood control, Little Calumet River, Indiana: Report of the Division Engineer, dated October 12, 1983, at a Federal cost of $56,800,000 (October 1982), subject to the approval of the Chief of Engineers, provided the Secretary shall assure the inclusion in the project of levees and other necessary structural measures in the Gary, Indiana, portion of such project from Cline Avenue to the eastern boundary of the project;

(18) Des Moines River Basin, Iowa and Minnesota: Report of the Chief of Engineers dated July 22, 1977, at a Federal cost of $11,200,000;

(19) Mississippi River, Coon Rapids Dam to Ohio River Green Bay Levee and Drainage District No. 2, Iowa: Report of the Chief of Engineers dated October 21, 1981, at a Federal cost of $5,480,000;

(20) Interim Report on Perry Creek, Iowa: Report of the Chief of Engineers dated February 4, 1982, at a Federal cost of $20,900,000.

(21) Halstead, Kansas: Report of the Chief of Engineers dated May 8, 1979, at a Federal cost of $6,130,000 (October 1982);

(22) Atchafalaya Basin Floodway system, Louisiana: Report of the Chief of Engineers dated February

28, 1983, at a Federal cost of $195,000,000 (October 1982);

(23) Bushley Bayou, Louisiana, Phase 1 GDM: Reports of the Chief of Engineers dated April 30, 1980, and August 12, 1982, at a Federal cost of $42,800,000 (October 1982);

(24) Louisiana State Penitentiary Levee, Mississippi River: Report of the Chief of Engineers dated December 10, 1982, at a Federal cost of $20,500,000 (October 1982);

(25) Quincy Coastal Streams, Massachusetts, Town Brook Interim: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $25,100,000 (October 1982);

(26) Mississippi River at St. Paul, Minnesota: Report of the Chief of Engineers dated June 16, 1983, at a Federal cost of $7,200,000 (October 1982);

(27) Redwood River at Marshall, Minnesota: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $3,130,000 (October 1982);

(28) Root River Basin, Minnesota: Report of the Chief of Engineers dated May 13, 1977, at a Federal cost of $8,150,000 (October 1982);

(29) South Fork Zumbro River Watershed at Rochester, Minnesota: Report of the Chief of Engi-

neers dated February 23, 1979, at a Federal cost of $77,800,000 (October 1982);

(30) Horn Lake Creek and Tributaries, Including Cow Pen Creek, Tennessee and Mississippi: Report of the Chief of Engineers dated January 4, 1983, at a Federal cost of $2,450,000 (October 1982);

(31) Sowashee Creek, Mississippi: Subject to the provisions of section 212 of this Act, the project for flood control, Sowashee Creek, Mississippi: Report of the District Engineer, dated July, 1983, at a Federal cost of $10,100,000 (October, 1982).

(32) Brush Creek and Tributaries, Missouri and Kansas: Report of the Chief of Engineers dated January 3, 1983, at a Federal cost of $12,100,000;

(33) Maline Creek, Missouri: Report of the Chief of Engineers dated November 2, 1982, at a Federal cost of $37,200,000;

(34) St. Johns Bayou and New Madrid Floodway, Missouri Phase I GMD: Report of the Chief of Engineers dated January 4, 1983, at a Federal cost of $69,000,000;

(35) Robinson's Branch of the Rahway River at Clark, Scotch Plains, and Rahway, New Jersey: Report of the Chief of Engineers dated October 10,

1975, at a Federal cost of $13,500,000 (October 1982);

(36) Rahway River and Van Winkles Brook at Springfield, New Jersey: Report of the Chief of Engineers dated October 24, 1975, at a Federal cost of $12,300,000 (October 1982);

(37) Green Brook Subbasin, Raritan River Basin, New Jersey: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $72,900,000 (October 1982);

(38) Middle Rio Grande Flood Protection, Bernalillo to Belen, New Mexico: Report of the Chief of Engineers dated June 23, 1981, at a Federal cost of $39,200,000 (October 1982): Provided, That the Secretary is authorized to increase flood protection through the dredging of the bed of the Rio Grande in the vicinity of Albuquerque, New Mexico, to an elevation lower than existed on the date of enactment of this Act;

(39) Puerco River and Tributaries, Gallup, New Mexico: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $3,220,000 (October 1982);

(40) Cazenovia Creek Watershed New York: Report of the Chief of Engineers dated September 8, 1977, at a Federal cost of $1,910,000 (October 1982);

(41) Mamaroneck and Sheldrake Rivers Basin and Byram River Basin, New York and Connecticut: Report of the Chief of Engineers dated April 4, 1979, at a Federal cost of $44,100,000 (October 1982);

(42) Hocking River at Logan and Nelsonville, Ohio: Report of the Chief of Engineers dated June 23, 1978, at a Federal cost of $6,180,000 for Logan and $6,460,000 for Nelsonville (October 1982);

(43) Miami River, Fairfield, Ohio: Report of the Chief of Engineers dated June 23, 1980, at a Federal cost of $9,180,000 (October 1982);

(44) Miami River, Little Miami River, Interim Report Number Two, West Carrollton, Holes Creek, Ohio: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $5,950,000 (October 1982);

(45) Muskingum River Basin, Ohio: Report of the Chief of Engineers dated February 3, 1978, at a Federal cost of $3,500,000 for Mansfield and $6,420,000 for Killbuck (October 1982);

(46) Scioto River at North Chillicothe, Ohio: Report of the Chief of Engineers dated September 4, 1981, at a Federal cost of $9,070,000 (October 1982);

(47) Fry Creeks, Oklahoma: Report of the Chief of Engineers dated September 7, 1983, at a Federal cost of $8,500,000 (October 1982);

(48) Mingo Creek, Tulsa, Oklahoma: Report of the Chief of Engineers dated November 16, 1981, at a Federal cost of $87,800,000 (October 1982);

(49) Parker Lake, Muddy Boggy Creek, Oklahoma: Report of the Chief of Engineers dated May 30, 1980, at a Federal cost of $43,800,000 (October 1982);

(50) Harrisburg, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated May 16, 1979, at a Federal cost of $102,000,000 (October 1982);

(51) Lock Haven, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $65,500,000 (October 1982);

(52) Saw Mill Run, Pittsburgh, Pennsylvania: Report of the Chief of Engineers dated January 30, 1978, at a Federal cost of $7,020,000 (October 1982);

(53) Wyoming Valley, Pennsylvania, Phase I GDM: Report of the Chief of Engineers dated October 19, 1983, at a Federal cost of $212,900,000 (October 1982);

(54) Big River Reservoir, Rhode Island: Report of the Chief of Engineers dated March 9, 1983, at a Federal cost of $40,900,000 (October 1982);

(55) Nonconnah Creek, Tennessee and Mississippi: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $19,200,000 (October 1982);

(56) Buffalo Bayou and Tributaries, Texas: Report of the Chief of Engineers dated June 13, 1978, at a Federal cost of $75,000,000 (October 1982);

(57) Boggy Creek, Austin, Texas: Report of the Chief of Engineers dated January 19, 1981, at a Federal cost of $13,800,000 (October 1982);

(58) Lake Wichita, Holliday Creek, Texas: Report of the Chief of Engineers dated July 9, 1979, at a Federal cost of $14,900,000 (October 1982);

(59) Lower Rio Grande, Texas: Subject to the provisions of section 212 of this Act, the project for flood control, Lower Rio Grande Basin, Texas: Report of the Board of Engineers for Rivers and Harbors, dated April 19, 1983, at a Federal cost of $109,400,000 (October 1982);

(60) James River Basin, Richmond, Virginia, Phase I GDM: Report of the Chief of Engineers dated

November 16, 1981, at a Federal cost of $79,600,000 (October 1982);

(61) Sims Bayou, Texas: Subject to the provisions of section 212 of this Act, the project for flood control, Sims Bayou, Texas: Report of the Board of Engineers for Rivers and Harbors, dated September 6, 1983, at a Federal cost of $96,868,000 (December 1982);

(62) Chehalis River at South Aberdeen and Cosmopolis, Washington: Report of the Chief of Engineers dated February 8, 1977, at a Federal cost of $19,300,000 (October 1982); and

(63) Yakima Union Gap, Washington: Report of the Chief of Engineers dated May 7, 1980, at a Federal cost of $8,640,000 (October 1983).

(b) HYDROPOWER DEVELOPMENT.—

(1) Scammon Bay, Alaska (Hydropower): Report of the Chief of Engineers dated August 9, 1983, at a Federal cost of $1,483,000 (October 1982).

(2) South Central Railbelt Area, Alaska, Hydroelectric Power, Valdez and Copper River Basin: Report of the Chief of Engineers dated October 29, 1982, at a Federal cost of $40,500,000 (October 1982);

(3) Murray Lock and Dam, Hydropower, Arkansas: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $92,900,000 (October 1982);

(4) Arkansas River and Tributaries, Arkansas and Oklahoma, Hydropower, Locks and Dams Nos. 13 and 9 and Toad Suck Ferry Lock and Dam (No. 8): Report of the Chief of Engineers dated September 1, 1983, at a Federal cost of $260,300,000 (October 1982).

(5) Metropolitan Atlanta Area Water Resources Management Study, Georgia: Report of the Chief of Engineers dated June 1, 1982, at a Federal cost of $24,500,000 (October 1982);

(6) Lucky Peak Dam and Lake, Idaho, Modification Study: Report of the Chief of Engineers dated March 17, 1980, at a Federal cost of $98,700,000 (October 1982);

(7) W. D. Mayo Lock and Dam 14, Hydropower, Oklahoma: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $112,100,000 (October 1982);

(8) Blue River Lake, Hydroelectric Power, Willamette River Basin, Oregon: Report of the Chief of

Engineers dated August 9, 1983, at a Federal cost of $28,600,000 (October 1982).

(9) McNary Lock and Dam Second Powerhouse, Columbia River, Oregon and Washington, Phase I GDM: Report of the Chief of Engineers dated June 24, 1981, at a Federal cost of $600,000,000 (October 1982); and

(10) Gregory County Hydroelectric Pumped Storage Facility, Stages I and II, South Dakota: Report of the Chief of Engineers dated April 26, 1983, together with such additional associated multipurpose water supply and irrigation features as are generally described in the final feasibility report of the District Engineer, at a Federal cost of $1,280,000,000, not to exceed $100,000,000 of which may be used to construct such associated water supply and irrigation features: Provided, That the additional associated multipurpose water supply and irrigation features shall be undertaken concurrently by the Secretary of the Interior in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplemental thereto), as a unit of the Pick-Sloan Missouri River Basin **[***program.***]** ***program: Provided further, That the Secretary of the Interior is authorized to undertake a fea-***

sibility study of the additional associated multipurpose water supply and irrigation features of the Gregory County Hydroelectric Pumped Storage Facility and that construction of the Gregory County Hydroelectric Pumped Storage Facility and such additional associated multipurpose water supply and irrigation features shall not be undertaken until the Secretary of the Interior has completed the feasibility report on such additional features and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such features will exceed the costs and that such additional features are physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof.

(c)(1) Shoreline Protection.—

(A) Charlotte County, Florida: Report of the Chief of Engineers dated April 2, 1982, at a Federal cost of $1,440,000 (October 1982);

(B) Indian River County, Florida: Report of the Chief of Engineers dated December 21, 1981, at a Federal cost of $2,300,000 (October 1982);

(C) Panama City Beaches, Florida: Report of the Chief of Engineers dated July 8, 1977, at a Federal cost of $26,200,000 (October 1982);

(D) Saint Johns County, Florida: Report of the Chief of Engineers dated February 26, 1980, at a Federal cost of $7,660,000 (October 1982);

(E) Jekyll Island, Georgia: Report of the Chief of Engineers dated March 3, 1976, at a Federal cost of $5,870,000 (October 1982);

(F) Casino Beach, Illinois Shoreline, Illinois: Report of the Division Engineer, dated April 27, 1983 at a Federal cost of $4,158,000 (October 1982), subject to the issuance of a final Report of the Chief of Engineers.

(G) Atlantic Coast of Maryland and Assateague Island, Virginia: Report of the Chief of Engineers dated September 29, 1981, at a Federal cost of $21,000,000 (October 1982);

(H) Atlantic Coast of New York City from Rockaway Inlet to Norton Point, New York: Report of the Chief of Engineers dated August 18, 1976, at a Federal cost of $2,970,000 (October 1982);

(I) The project for shoreline protection for the southeast shore of Maumee Bay, Lake Erie, Ohio, from Cedar Point National Wildlife Refuge to West

Bay Shore Road, Oregon, Ohio: Report of the District Engineer, Buffalo District, dated June 29, 1983, at a Federal cost of $10,396,000 subject to the approval of the Chief of Engineers: Provided, That the Secretary is further authorized to contract with the State of Ohio on the items of local cooperation for such project, which are to be assumed by the State, notwithstanding that the State may elect to make its performance of any obligation contingent upon the State legislature making the necessary appropriations and funds being allocated for the same or subject to the availability of funds on the part of the State;

(J) Presque Isle Peninsula, Erie, Pennsylvania: Report of the Chief of Engineers dated October 2, 1981, at a Federal cost of $17,200,000 (October 1982); and

(K) Folly Beach, South Carolina: Report of the Chief of Engineers dated March 17, 1981, at a Federal cost of $1,110,000 (October 1982).

(2) Construction of the projects authorized in this subsection shall be subject to determinations of the Secretary, after consultation with the Secretary of the Interior, that the construction will be in compliance with the Coastal Barrier Resources Act (Public Law 97-348).

(d) MITIGATION.—

(1) Fish and Wildlife Program for the Sacramento River Bank Protection Project, California, First Phase: Report of the Chief of Engineers dated September 1, 1981, at a Federal cost of $2,030,000 (October 1982);

(2) Richard B. Russell Dam and Lake, Savannah River, Georgia and South Carolina, Fish and Wildlife Mitigation Report: Report of the Chief of Engineers dated May 11, 1982, at a Federal cost of $18,700,000 (October 1982);

(3) Davenport, Iowa Local Protection Project-Fish and Wildlife Mitigation Plan: Report of the Chief of Engineers dated July 9, 1979, at a Federal cost of $387,000.

(4) West Kentucky Tributaries Projects, Fish and Wildlife Mitigation Plan, Obion Creek, Kentucky: Report of the Chief of Engineers dated September 16, 1980, at a Federal cost of $3,980,000 (October 1982);

(5) Downstream Measures at Harry S. Truman Dam and Reservoir, Missouri: Report of the Chief of Engineers dated December 21, 1981, at a Federal cost of $2,000,000.

(6) Smithville Lake, Little Platte River, Missouri-Plan for Replacement of the Trimble Wildlife Area:

Report of the Chief of Engineers dated September 22, 1977, at a Federal cost of $7,770,000.

(7) Cape May Inlet to Lower Township, New Jersey, Phase I GDM: Report of the Chief of Engineers dated December 23, 1981, at a Federal cost of $15,600,000 (October 1982); and

(8) Cooper Lake and Channels Project, Texas, Report on Fish and Wildlife Mitigation: Report of the Chief of Engineers dated May 21, 1982, at a Federal cost of $7,570,000 (October 1982).

(e) BANK STABILIZATION.—

(1) Bethel, Alaska: Report of the Chief of Engineers dated July 30, 1983, at a Federal cost of $13,780,000 (October 1982).

(f) DEMONSTRATION.—

(1) Cabin Creek, West Virginia, Demonstration Reclamation Project: Report of the Chief of Engineers dated March 1, 1979, at a Federal cost of $32,800,000 (October 1982); and

(2) Lava Flow Control, Island of Hawaii, Hawaii: Report of the Chief of Engineers dated July 21, 1981, at a Federal cost of $3,950,000 (October 1982).

TITLE VIII—WATER SUPPLY LOANS

SEC. 801. (a) The Congress hereby finds that—

(1) many water supply systems are in deterioration and that adequate Federal authority does not exist to address the problems of existing municipal and industrial water supply systems;

(2) certain regions of the Nation are facing serious water supply problems and large quantities of water are being wasted as a result of aging and deteriorating water supply and distribution facilities;

(3) modernizing existing water supply systems is an important part of any effort to rejuvenate the Nation's cities and remove impediments to economic growth;

(4) many water supply systems have experienced difficulty in obtaining capital necessary to accomplish repairs, rehabilitations, expansions, and improvements required for efficient and reliable operation;

(5) in light of historic and continuing Federal involvement in meeting many other water supply problems, there is a national need to rehabilitate and upgrade existing water supply systems;

(6) in all regions of the country and in all circumstances in which the Federal Government is involved in providing water supply, it is essential to promote water conservation; and

(7) encouraging the use of low-flow devices in new construction, improving metering and rate schedules and leak detection programs, and adopting other water conservation methods saves water and energy.

(b) The Congress hereby declares that—

(1) the Federal Government shall provide financial assistance in the form of loans to water supply system operators;

(2) such assistance shall be directed especially to systems without alternative financing sources and systems with severe drinking water quality problems; and

(3) such assistance shall be used for, among other purposes, improved water conservation.

SEC. 802. (a) Subject to the provisions of this title, the Secretary may make loans to—

(1) any department, agency, or instrumentality of one or more State or local governments which operates a water supply system, and

(2) any person who operates a water supply system the rates and services of which are subject to regulation by a department, agency, or instrumentality of a State government, for the purpose of repair, rehabilitation, or expansion, of such system.

(b) The Secretary shall allocate—

(1) one-half of the funds to be loaned in each fiscal year among the States in proportion to each State's population, or such lesser figure if the total amount of loans for which eligible water supply operators in a State apply is less than the sums allocated to such State; and

(2) the remainder of the funds at the discretion of the Secretary.

(c) No loan may be made under this title for any purpose not related to water supply or water conservation.

(d) No loan may be made under this title for the purpose of acquisition by an operator of a water supply system of another such system.

SEC. 803. (a) Any operator of a water supply system seeking a loan under this title shall submit an application to the Secretary for such loan in such form and manner as the Secretary may require by regulation. Applications for loans in the following fiscal year shall be submitted to the Secretary not later than March 1, 1984, and annually thereafter. Not later than September 1, 1984, and annually thereafter, the Secretary shall approve or disapprove such applications.

(b) Any application for a loan under this title shall include, among other things:

(1) a detailed plan and estimated cost of the project for which the loan is applied;

(2) a showing (A) that the applicant holds or can acquire all lands and interests in land (except public and other lands and interests in land owned by the United States which are within the administrative jurisdiction of the Secretary and subject to disposition by the Secretary) and rights to the use of water pursuant to applicable State law necessary for the successful completion, operation, and maintenance of the project, and (B) that the applicant is ready, willing, and able to finance the portion of the cost of the project which will not be covered by the loan; and

(3) an assessment of the improvements the proposed project will make in supplying water for domestic, commercial, and industrial purposes, as well as public purposes including fire protection and recreation.

(c) The Secretary may only make loans under this title with respect to projects which the Secretary determines are technically feasible and which constitute a reasonable financial risk.

(d) In making loans under this title, the Secretary shall give priority—

(1) to water supply systems otherwise unable to obtain financial assistance; and

(2) to water supply systems that will use the proceeds of such loans to pay the costs of installing a new system or improving an existing system to achieve compliance with the provisions of the Safe Drinking Water Act of 1974 (42 U.S.C. 300f et seq.) and regulations promulgated thereunder.

SEC. 804. (a) The Governor of any State may submit by April 1, 1984, and annually thereafter, a priority list of water supply projects in such State to be financed by loans under this title. Such list shall include the name of each project for which loan applications have been submitted to the Secretary, the priority ranking of such project, and the recommended level of financing from loans under this title.

(b) The Secretary may take into account the priority lists submitted pursuant to subsection (a) of this section in allocating funds among the candidate projects in such State.

SEC. 805. (a) The Secretary may only make loans under this title to an operator of a water supply system if the Secretary determines that, before completion of the proposed project, the operator will, to the best of the operator's ability, implement a model water conservation program or a water conservative program, suitable to local conditions, which is equivalent to a model water conservation program.

(b) For purposes of this section, the term "model water conservation program" includes the following:

(1) encouraging each community served by the water supply system to establish plumbing codes which promote water conservation in new construction;

(2) to the extent feasible and appropriate, utilizing water meters which promote water conservation;

(3) establishing water rate schedules which encourage water conservation;

(4) providing a comprehensive leak detection and repair program for water supply systems;

(5) making public information available on home and business water conservation techniques and benefits; and

(6) developing a drought contingency plan.

SEC. 806. (a) The Secretary shall enter into an agreement with each person to whom a loan is to be made under this title. Such agreement shall include the following terms, among others—

(1) the maximum amount of the loan to be made and the time and method of making funds available under the loan;

(2) an interest rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the

month preceding the fiscal year in which funds are first disbursed;

(3) a repayment period, not to exceed thirty years, and a plan of repayment of the sums lent, plus interest; and

(4) such provisions as the Secretary shall deem necessary or proper to provide assurance of and security for prompt repayment of the loan and interest, including a provision that the operator of the water supply system shall maintain adequate rates in order to be expected to meet its obligations under the agreement and to maintain, repair, and rehabilitate the project for which the loan is made.

(b) The Secretary may agree to an interest rate and a plan of repayment in accordance with section 301(b) of the Water Supply Act of 1958 (72 Stat. 319; Public Law 85–500), if the Secretary determines that terms in accordance with subsection (a) of this section would represent a severe economic burden on the recipient of the loan.

SEC. 807. Amounts of loans (including interest accruing on such loans) repaid under this title shall be deposited in the general fund of the Treasury.

SEC. 808. The Secretary shall issue such regulations and carry out such actions as may be necessary to carry out the objectives of this title.

SEC. 809. There is authorized to be appropriated to the Secretary for the purposes of this title, the sum of $400,000,000 for the fiscal year ending September 30, 1985, $500,000,000 for the fiscal year ending September 30, 1986, $600,000,000 for the fiscal year ending September 30, 1987, $700,000,000 for the fiscal year ending September 30, 1988, and $800,000,000 for the fiscal year ending September 30, 1989, such sums to remain available until expended.

SEC. 810. (a) The Secretary shall submit to Congress, no later than September 30, 1988, a report on—

(1) the characteristics of applicants for and approved recipients of loans extended under this title with respect to regional distribution, size, ownership, and other parameters;

(2) the purposes for which such loans have been used;

(3) water conservation measures that have been implemented by the recipients of such loans;

(4) the impact of such loans on the financial health of the recipients of such loans;

(5) the extent to which the needs of water supply systems, as indicated by the applications for loans under this title received by the Secretary and by other factors, are met by such loans;

(6) the contribution of State priority lists to the process of selecting projects;

(7) recommendations on the need for a continuation of the loan program established by this title after September 30, 1989, the appropriate levels of funding for subsequent fiscal years, and needed changes in the eligibility criteria, allocation of funds, or other aspects of the program; and

(8) recommendations on additional mechanisms for financing the rehabilitation and expansion of water supply systems.

(b) For the purpose of this section, there is authorized to be appropriated to the Secretary the sum of $2,000,000 for the fiscal year ending September 30, 1985, or any fiscal year thereafter, such sum to remain available until expended.

SEC. 811. Notwithstanding any other provision of law, the development, expansion, and rehabilitation of municipal and industrial water supply and distribution systems, either alone or as part of a multiple purpose project authorized in this Act or subsequent to this Act, is hereby declared to be a legitimate Federal purpose.

SEC. 812. For purposes of this title—

(1) the term "expansion", as used with respect to a water supply system, means the installation of water

supply facilities necessary to increase the service capability or capacity of the water supply system;

(2) the term "rehabilitation", as used with respect to a water supply system, means the repair or replacement of components or facilities required to restore service reliability or efficiency of the water supply system;

(3) the term "State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands; and

(4) the term "water supply system" means the facilities used in the production and pumping of water for consumption (including, but not limited to, water storage, desalination, and other collection and purification techniques), water treatment facilities (other than sewage treatment facilities), and the water distribution and conveyance facilities used to provide water for municipal and industrial purposes.

SEC. 813. This title may be cited as the "Water Supply Rehabilitation and Conservation Act of 1983".

TITLE IX—WATER RESOURCE PLANNING

SEC. 901. (a) There is hereby established a National Board of Water Policy (hereinafter in this title referred to as *the "Board"), to be composed of the Secretary of the Army,* **[the Secretary of the Interior,]** *the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and a chairman chosen by the President, with the advice and consent of the Senate. The Chairman shall be compensated at the rate for level II of the Executive Schedule under section 5313 of title 5, United States Code. Actions of the Board shall be by majority vote.*

(b) The Board shall meet at least six times annually to: (1) advise the President and Congress on matters relating to water resources policy, (2) identify inconsistencies in such policy and programs and to recommend to the President and Congress changes in law or procedures that will emphasize the cost-effective conservation, development, and use of the water resources of the United States, (3) establish and issue rules and procedures designed to assure the implementation of a national water resources policy and program, pursuant to law, with attention to coordination among departments and agencies of the United States, (4) recommend to appropriate Federal agencies goals and priorities for programs within their jurisdiction, including studies and research, where needed, and the development of plans for river basins that have been identified by the Board, to assure the wise management and development of the waters of the United States, and (5) prepare periodic assessments of national water needs, in-

cluding studies of the adequacy of supplies of water needed to meet national, regional, and State requirements.

(c) The Board shall, as necessary, utilize the expertise that is available in departments and agencies of the United States.

(d) The Board shall be deemed an "agency" for the purposes of the open meeting provisions of section 552b of title 5, United States Code, known as the Government in the Sunshine Act.

SEC. 902. (a) The Board shall establish by rule, after such consultation with other interested entities, both Federal and non-Federal, as the Board may find appropriate, principles, standards, and procedures for Federal participation in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources management and development plans. The quality of the total environment (including its protection and improvement) and national economic development shall be the objectives to be included in each such plans, and the benefits and costs attributable to such objectives, both quantifiable and unquantifiable, shall be included in the evaluation of the benefits and costs of each such plan or project. Such principles, standards, and procedures shall require that every report relating to any such water or related land resources project include specific information on the *benefits and costs attributable to each of such objectives. Such principles, standards, and procedures shall also define water conservation as including projects, programs, or features thereof, designed to (1) reduce the demand for water, (2) improve efficiency in use and reduce losses and waste of water (including by storage), or (3) improve land management practices to conserve water.*

(b) The Board shall establish separate principles, standards, and procedures as described in subsection (a) of this section for small Federal water or related land resources planning administered by the United States Department of Agriculture.

(c) The principles, standards, and procedures promulgated under the Water Resources Planning Act by the Water Resources Council, as contained in sections 711.1 through 716.309 of title 18 of the Code of Federal Regulations as those sections were in effect on March 9, 1983, shall be in effect until such time as principles, standards, and procedures established under this section take effect.

Sec. 903. For the purposes of sections 901 and 902 of this title, there is authorized to be appropriated to the Board the sum of $5,000,000 in each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, such sums to remain available until expended.

SEC. 904. (a) To assist the work of the Board, there is hereby established a State Advisory Committee (hereinafter in this title referred to as the "State Committee"), which shall be composed of five members.

(b)(1) The chairman of the State Committee shall be appointed by the Board from persons recommended by the governing body of the National Governors Association on the basis of his or her understanding of the Nation's water resources needs and shall participate in all meetings of the Board to assure that it is informed of the position of the States on all issues before it.

(2) The remaining members of the State Committee shall be selected jointly by the Board and the Chairman of the State Committee from persons recommended by the governing body of the National Governors Association in order to provide for a broad national and regional representation in water resources management.

(c) The State Committee shall meet at least six times a year to review actions and proposals made by the Board, and to offer its analysis of such actions and proposals, including recommendations for changes. Any such analysis shall accompany any report submitted by the Board to the President and Congress.

(d) The sum of $100,000 is authorized to be appropriated to the Board to reimburse the members of the State

Committee for necessary expenditures for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, such sums to remain available until expended.

SEC. 905. The agencies authorized to be established by sections 901 and 903 of this Act are authorized to hire necessary staff and to contract for studies to carry out their authorized functions, within available sums.

SEC. 906. Nothing in this title shall be construed to alter existing law with respect to the ownership and control of water.

SEC. 907. The provisions of this title shall not be applicable to any water resource policy, program, law or project administered by or under the jurisdiction of the Secretary of the Interior.

TITLE X—HARBORS

SEC. 1001. (a) There is authorized to be established a National Commission on Harbor Maintenance (hereinafter in this title referred to as the "Commission"), which shall report to the appropriate committees of the Congress no later than two years after the date of enactment of this Act on the annual and long-term costs of maintaining the Nation's harbors, and make such recommendations as it finds appropriate for the sharing of these costs by non-Federal interests, and the means by which to recover such non-Federal share.

(b) The Commission shall be composed of the Secretary of the Army, the Secretary of Transportation, the Secretary of the Treasury, the Special Trade Representative, and a chairman to be appointed by the President.

(c) The Commission shall weigh the interests of the port authorities, navigation districts, and similar organizations, as well as shippers and carriers of the United States, in making its recommendations, and shall include an assessment of the impact of its recommendations on each of these interests.

(d) To assist the Commission in its work, there is authorized to be established a Shipping Advisory Board to be made up of eleven members, selected by the Commission Chairman, to provide representation for the United States port interests from various coasts and the Great Lakes, both large and small United States ports, United States shippers of bulk and general cargoes, and United States carriers of both bulk and general cargoes.

(e) To carry out the purposes of this section, there is authorized to be appropriated to the Commission for the fiscal year ending September 30, 1985, or thereafter, the sum of $3,000,000, such sum to remain available until expended.

(f) Until such time as the report of the Commission is submitted to the Congress, and Congress acts by law on the recommendations of the Commission, the Secretary of the

Army shall obligate from sums appropriated no more than $350,000,000 in any single fiscal year for the purpose of maintaining the harbors of the United States.

(g) Nothing in this section shall be construed to prohibit or otherwise interfere with the authority of the Secretary or other Federal agency to operate or maintain any harbor of the United States for emergency purposes or for purposes of Coast Guard navigation requirements, Department of the Navy navigation requirements, or requirements for vessels carrying military personnel and materiel.

SEC. 1002. (a) The non-Federal interests shall be responsible for 50 per centum of the costs incurred by the Secretary for surveying, planning, designing, and engineering necessary prior to the construction of a general cargo harbor.

(b)(1) A non-Federal interest may undertake a feasibility study for improvements to a general cargo harbor, and submit such study to the Secretary. To assist non-Federal interests, the Secretary shall as soon as practicable promulgate guidelines for harbor feasibility studies in order to provide sufficient information for the formulation of a plan of study.

(2)(A) The Secretary shall review each feasibility study submitted by non-Federal interests for a general cargo harbor submitted under paragraph (b)(1) of this section for the purpose of determining whether or not such study was prosecuted

in accordance with the guidelines promulgated under such paragraph and was developed in compliance with Federal laws and regulations applicable to navigation projects for harbors.

(B) Not later than one hundred and eighty days after receiving any feasibility study under paragraph (b)(1) of this section, the Secretary shall transmit to the Congress, in writing, the results of such study and any recommendations the Secretary may have concerning the project described in such study.

(3) The costs of studies made under this subsection shall be borne by the non-Federal interest.

SEC. 1003. (a)(1) The non-Federal share of the cost of construction of general cargo harbors on which construction has not been commenced shall be 30 per centum.

(2) For purposes of this section, a project shall be deemed to have commenced construction if the non-Federal interest has entered into a written contract as of December 31, 1983, with the Secretary to provide local cooperation required pursuant to the project authorization, including, where applicable, an agreement under section 221 of Public Law 91–611, as amended.

(b) Prior to Federal initiation of construction of a project approved pursuant to this section, or a general cargo harbor previously authorized by the Congress for which con-

struction has not commenced under the terms of subsection (a)(2) of this section, the Secretary and the non-Federal interest shall enter into a cooperative agreement according to procedures set forth in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501). The non-Federal interest shall agree to—

(1) provide to the Federal Government lands, easements, and rights-of-way, required for construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or operation and maintenance of such project except for damages due to the fault or negligence of the United States or its contractors; and

(3) provide to the Federal Government the non-Federal share of all other construction costs of such project: Provided, however, That the value and costs of providing lands, easements, and rights-of-way, shall be credited toward the non-Federal share of the cost of construction. Any cash differential needed to fulfill the non-Federal share shall be provided to the Federal Government on an annual basis during the period of construction, beginning not later than one year after construction is initiated.

SEC. 1004. (a) Any non-Federal interest is authorized to undertake navigational improvements in deep-draft harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

(b) The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any study for improvements to deep-draft harbors of the United States which were initiated prior to the date of enactment of this Act, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (c) of this section.

(c) When requested by an appropriate non-Federal interest, the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under subsection (a) of this section, and assist in obtaining all necessary permits: Provided, That the non-Federal interest contracts with the Secretary to reimburse the United States for the cost of such studies and engineering during the period that they are conducted.

(d) The Secretary is authorized to complete deep-draft harbor construction projects for which construction was initiated by the Secretary prior to the date of enactment of this

Act: Provided, That for projects in which the appropriate non-Federal interest has not entered into a written contract as of December 31, 1983, with the Secretary to provide the local cooperation required pursuant to the project authorizations, including, where applicable, an agreement under section 221 of Public Law 91–611, as amended, such non-Federal interest shall be required to contract with the Secretary to repay, within fifty years of the date of enactment of this Act, the cost of all such work undertaken after September 30, 1984, together with interest on the unpaid balance at a rate to be determined by the Secretary of the Treasury. The Secretary of the Treasury, in determining such rate of interest, shall consider the average market yields during the month preceding the fiscal year in which each advance is made on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the reimbursement period of the project.

(e)(1) Upon the application of the appropriate non-Federal interest, the Secretary is authorized to guarantee the payment of the principal amount of, and interest on, loans made or bonds sold to finance projects for the deepening of a deep-draft harbor of the United States, as authorized by subsection (a) of this section. The obligation of the United States under a guarantee pursuant to this subsection may not exceed 70 per centum of the principal of and unpaid interest

of such loan, including reasonable administrative costs as determined by the Secretary. The full faith and credit of the United States is pledged to the payment of all guarantees made under this section, including interest as provided for in the guarantee accruing between date of default on a guaranteed obligation and the payment in full of the amount guaranteed.

(2) The Secretary shall assess a fee of not less than one-quarter of 1 per centum of the amount of each guarantee to cover administrative and other costs of the loan or bond guarantee program under this subsection.

(3) With respect to loans or bonds guaranteed under this subsection—

(A) the total outstanding amount guaranteed under this subsection in any fiscal year may not exceed $1,500,000,000, subject to such limitation as may be contained in an appropriations Act;

(B) to make any payments required under any guarantee under subsection (a) of this section, there is authorized to be appropriated to the Secretary such sums as may be necessary; and

(C) the Secretary may not issue a guarantee when the interest is exempt from Federal income tax under section 103 of the Internal Revenue Code of 1954.

(f) Beginning on October 1, 1984, the Secretary shall undertake no construction work on any harbor except under the terms of this section, or sections 1003 or 1005 of this title.

(g) Whenever a non-Federal interest constructs improvements to any harbors, the Secretary shall be responsible for maintenance to forty-five feet below mean low water, and 50 per centum of the costs of incremental maintenance beyond forty-five feet below mean low water: Provided, That the Secretary certifies that the project is constructed in accordance with appropriate engineering and design standards.

(h) Pursuant to subsection (a) of this section, the non-Federal interest shall provide for 50 per centum of the costs expended for any necessary relocation and alteration of existing pipelines, cables, and related facilities (but not to include any cost for upgrading or improvements to such pipelines, cables, and related facilities).

SEC. 1005. (a) Nothing in this title shall be construed to prohibit or otherwise interfere with the Secretary or other Federal authority to operate, maintain, or improve any harbor for purposes of Coast Guard navigation requirements, Department of the Navy navigation requirements, or requirements for vessels carrying military personnel and materiel.

(b) Any project authorized under the provisions of this section may include additional improvements requested by

the appropriate non-Federal interest: Provided, That prior to the commencement of such improvements, the appropriate non-Federal interest enters into a contract with the Secretary or other Federal authority to pay, during the period of construction, that portion of the project's cost which the Secretary or other Federal authority determines to be allocable to non-defense-related needs, if such project is a deep-draft harbor, or 30 per centum of the cost during the period of construction, if such project is a general cargo harbor. If such non-Federal interest fails to so participate, the Secretary or other Federal authority shall design such project solely to meet national defense requirements.

(c) If non-Federal interests undertake a project under the terms of section 1004 of this title which can be expected to provide direct benefits to the national defense requirements of the United States, the Secretary or other Federal authority is authorized prior to the commencement of construction to contract with such non-Federal interests, subject to appropriations Acts, to pay, during the period of construction, that portion of the project costs directly attributable to national defense requirements, as defined in subsection (a) of this section.

(d) Whenever the Secretary undertakes improvements to a general cargo harbor, the Secretary is authorized to reduce the percentage share of commitment required by the non-Fed-

eral interest on a proportional basis related to that portion of the traffic that provides direct benefits to the national defense requirements of the United States.

~~*SEC. 1006. (a) Notwithstanding any other provision of law, any appropriate non-Federal interest, upon enactment of this Act and in accordance with the provisions of this section, is authorized to recover its obligations for construction, together with its costs for incremental maintenance work undertaken pursuant to section 1004 of this title, including associated administrative expenditures, by the collection of fees for the use of such projects by vessels in commercial waterway transportation.*~~

~~*(b) Any fees collected to recover the cost of any harbor maintenance or improvement undertaken pursuant to this Act shall be established so that no less than 80 per centum of such fees will be assessed on users that benefit directly. Such fees shall be established after a public hearing held pursuant to State law.*~~

~~*(c) Fees collected by a non-Federal interest pursuant to the authority of this Section shall be used only for the purpose of paying for the non-Federal share of the cost of construction and incremental maintenance work on harbors, or any obligations undertaken for that purpose.*~~

~~*(d) Fees authorized by this section shall not be imposed on—*~~

~~*(1) vessels owned and operated by the United States or any other nation or any political subdivision thereof and not engaged in commercial service; or*~~

~~*(2) vessels used by a State or political subdivision thereof in transporting persons or property in the business of the State or political subdivision and not engaged in commercial service.*~~

SEC. 1006. Any appropriate non-Federal interest which has constructed, maintained, or funded any project may submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives proposals and recommendations for legislation which would authorize such non-Federal interests to collect fees for the use of such project by vessels in commercial waterway transportation.

SEC. 1007. (a) The Secretary, upon receipt from an appropriate non-Federal interest of a written notice of intent to construct improvements, shall initiate procedures to establish a schedule of compliance for the purpose of joint processing of all Federal permits required prior to initiation of such construction activities.

(b)(1) Within fifteen days of the receipt of correspondence under the terms of subsection (a) of this section, the Secretary shall publish such notice in the Federal Register.

The Secretary shall also notify in writing all State and local agencies that may be required to issue permits for construction of such improvements and related activities that such construction is proposed. The Secretary shall solicit the cooperation of such agencies and request that they also become parties to a memorandum of agreement (hereinafter in this Act referred to as the "agreement"). If within thirty days following publication of notice in the Federal Register any such agency advises the Secretary in writing of its willingness to become a signatory to the agreement, the Secretary shall include such agency in the agreement.

(2) Within ninety days of the Secretary's receipt of the correspondence described in subsection (a) of this section, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies which have notified the Secretary in writing shall enter into the agreement with the Secretary to establish a schedule of compliance with the necessary Federal permits required for undertaking such improvements. The schedule of compliance shall not exceed two years from the date of the agreement.

(c)(1) The agreement shall, to the extent possible, consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting process with data collection and analy-

sis associated with the feasibility study conducted by the non-Federal interest. The agreement will also detail the non-Federal interest's responsibilities with respect to data development, and information necessary to process each permit, including a schedule of dates when such information and data will be provided to the appropriate Federal, State, or local agency.

(2) Such agreement shall also include a scheduled date by which the Secretary, taking into consideration the views of all of the affected Federal agencies, shall determine whether there is a reasonable likelihood the necessary permit or permits will not be issued, then the Secretary shall so notify the appropriate non-Federal interest. The Secretary may revise the agreement only once to extend the schedule of compliance for a period not to exceed one hundred and twenty days for the purpose of allowing the non-Federal interest to revise the original application to meet the objections of the Federal agencies.

(d) Six months prior to the final day of the schedule the Secretary shall provide to Congress a written progress report. The report shall be transmitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Public Works and Transportation of the United States House of Representatives. The report will summarize all work completed in accordance with the agree-

ment and shall include a detailed work plan which shall assure completion of all remaining work in accordance with the agreement.

(e) Not later than the final day of the compliance schedule, the Secretary shall notify the non-Federal interest as to whether the permit or permits are issued.

(f) Not later than March 1, 1985, the Secretary shall prepare and transmit to the Congress a report describing the amount of time required to issue Federal environmental permits related to construction of harbor improvements. The Secretary shall include in such report recommendations for reducing the amount of time required to issue such permits, including any proposed changes in existing law.

SEC. 1008. For the purposes of this Title, the terms—

(1) "harbors" means the channels and harbors of the United States with a depth authorized by law of fourteen feet or greater and a width authorized by law, or to the depths and widths the construction of which was initiated by non-Federal interests after July 1, 1970, and prior to January 1, 1981, or to the depths and widths that may be constructed under the terms of this title: Provided, That such term does not mean local access or berthing channels: And provided further, That such terms shall be considered for the Columbia River, Oregon and Washington, to include the chan-

nels only up to the downstream side of Bonneville Lock and Dam, Oregon and Washington;

(2) "general cargo harbors" means a harbor which is authorized to be constructed to a depth of forty-five feet or less, or a harbor authorized to be constructed by the Secretary to depths greater than forty-five feet if such authorization occurred prior to January 1, 1972;

(3) the term "deep-draft harbor" means a harbor which is constructed to a depth of greater than forty-five feet; and

(4) the term "non-Federal interests" has the meaning such term has under section 221 of Public Law 91–611, as amended.

SEC. 1009. (a) The following works for improvement of general cargo harbors are hereby adopted and authorized to be prosecuted by the Secretary in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated: Provided, That the figures listed in this title shall be subject to the limitations provided under section 213 of this Act and this title:

(1) Kodiak Harbor, Alaska: Report of the Chief of Engineers dated September 7, 1976, at a Federal cost of 13,400,000;

(2) Oakland Outer Harbor, California: Report of the Chief of Engineers dated January 7, 1980, at a Federal cost of $36,040,000;

(3) Richmond Harbor, California: Report of the Chief of Engineers dated August 8, 1982, at a Federal cost of $48,400,000;

(4) Sacramento River, Deepwater Ship Channel, California: Report of the Chief of Engineer dated November 20, 1981, at a Federal cost of $77,000,000;

(5) New Haven Harbor, Connecticut: Report of the Chief of Engineers dated July 26, 1982, at a Federal cost of $23,000,000;

(6) Jacksonville Harbor, Mill Cove, Florida: Report of the Chief of Engineers dated February 12, 1982, at a Federal cost of $5,700,000;

(7) Manatee Harbor, Florida: Report of the Chief of Engineers dated May 12, 1980, at a Federal cost of $10,600,000;

(8) Tampa Harbor, East Bay Channel, Florida: Report of the Chief of Engineers dated January 25, 1979, to assume maintenance;

(9) Savannah Harbor, Widening, Georgia: Report of the Chief of Engineers dated December 19, 1978, at a Federal cost of $11,700,000;

(10) Grand Haven Harbor, Michigan: Report of the Chief of Engineers dated October 9, 1979, at a Federal cost of $12,900,000;

(11) Monroe Harbor, Michigan: Report of the Chief of Engineers dated November 25, 1981, at a Federal cost of $68,700,000;

(12) Gulfport Harbor, Mississippi: Report of the Chief of Engineers dated January 16, 1978, except that the Chief of Engineers is authorized to construct the project in the most cost effective and environmentally sound manner at a Federal cost not to exceed $73,700,000. (—);

(13) Wilmington Harbor, Northeast Cape Fear River, North Carolina: Report of the Chief of Engineers dated September 16, 1980, at a Federal cost of $7,740,000;

(14) Portsmouth Harbor and the Piscataqua River Basin, Maine and New Hampshire, in accordance with the Division Engineer's report dated July 1982, at a Federal cost of $21,200,000 (April 1983), subject to approval by the Chief of Engineers;

(15) Gowanus Creek, Channel, New York: Report of the Chief of Engineers dated September 14, 1982, at a Federal cost of $2,000,000;

(16) Kill Van Kull and Newark Bay Channels, New York and New Jersey: Report of the Chief of Engineers dated December 14, 1981, at a Federal cost of $178,000,000;

(17) San Juan Harbor, Puerto Rico, Phase I GDM: Report of the Chief of Engineers dated December 23, 1982, at a Federal cost of $72,800,000;

(18) Charleston Harbor, South Carolina: Report of the Chief of Engineers dated August 27, 1981, at a Federal cost of $76,100,000;

(19) Brazos Island Harbor, Texas, Brownsville Channel: Report of the Chief of Engineers dated December 20, 1979, at a Federal cost of $26,700,000;

(20) Crown Bay Channel-Saint Thomas Harbor, Virgin Islands: Report of the Chief of Engineers dated April 9, 1982, at a Federal cost of $3,500,000; and

(21) Blair and Sitcum Waterways, Tacoma Harbor, Washington: Report of the Chief of Engineers dated February 8, 1977, at a Federal cost of $30,000,000.

(22) Grays Harbor, Washington: Report of the Board of Engineers for Rivers and Harbors, dated January 17, 1983, at a Federal cost of $77,800,000 (January, 1983), subject to the issuance of a final Report of the Chief of Engineers.

(b) It is the sense of the Congress that the following navigational improvements for deep-draft harbors, which have been reviewed favorably by the Chief of Engineers, should be constructed by non-Federal interests in an expeditious manner under the terms of section 1004 of this title:

(1) Norfolk Harbor and Channels, Virginia;

(2) Mobile Harbor, Alabama; and

(3) Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana.

The Secretary shall transfer such studies and reports to the appropriate non-Federal interest as soon as practicable upon enactment of this Act.

SEC. 1010. This title may be cited as the "National Harbors Improvement Act of 1983".

Calendar No. 973

98TH CONGRESS
2D SESSION

S. 1739

[Report No. 98–340]
[Report No. 98–418]
[Report No. 98–509]

A BILL

To authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

JUNE 8 (legislative day, JUNE 6), 1984

Reported with amendments

STATEMENT OF SENATOR MAX BAUCUS

Mr. Chairman, I want to compliment you for your leadership in bringing the Water Resources Development Act to the Finance Committee for consideration. As a member of the Environment and Public Works Committee, I feel very strongly that national water policy questions should be dealt with by that Committee. However, I also feel very strongly that tax policy and revenue questions should be dealt with in the Finance Committee.

I support the passage of a Water Resources Development Act this year. Now that the jurisdictional questions have been cleared up, I hope that we will be able to move a bill to the Senate floor.

I cannot support Title V of S. 1739 as it now stands. I also have concerns over Title X. I look forward to reviewing today's testimony before the Finance Committee markup.

Title V of S. 1739 would cap through the year 2000, annual federal obligations for expenditures on the commercial inland waterway system at $646 million dollars. At the same time, it would give the Secretary of the Army sole authority to impose and collect additional waterway user charges (i.e. taxes) if funding above the cap is required.

Title V also establishes a 21 member Inland Waterway Users Board, whose members are selected by the Secretary of the Army, to recommend inland waterway spending levels. This Board, however, is strictly advisory; the Secretary is not required to follow the recommendations of this Board concerning either revenue or expenditure levels.

No one knows the potential impact of Title V. It amounts to a game of Russian roulette for users. It places the private sector—shippers and carriers—totally at risk. The bill surrenders jurisdiction over expenditures and revenues of the federal inland waterways from Congress to the Corps of Engineers. According to the Corps' own analysis, drastic increases in the fees would occur year to year. I feel strongly that the Finance Committee has a responsibility to change this provision—to make sure that Congress maintain jurisdiction over expenditures and revenues.

AGRICULTURAL CONCERNS

I am pleased to see that we have a number of expect witnesses here today from agricultural groups. I spoke earlier of waterway users being totally at risk under S. 1739. There is no group that would be more at risk than agriculture.

Farmers rely on inland waterways to get their crops to the export markets and to receive important farm inputs, such as fertilizer. Adding to the cost of transportation will be a direct cost to the farmer—they have no way to pass along these additional costs.

In 1983, the U.S. exported 162 million metric tons of wheat, feed grain, corn and soybeans. Approximately 40 percent of these exports moved through the nation's waterways. Existing user fees are expected to cost American farmers $38 million in 1984. Using the Corps of Engineers projections for an increase in the fuel tax to 48 cents, and without taking inflation into account it is estimated that farmers will have to absorb $226 million in user fees in 1990 for grain alone.

The Congressional Budget Office in a study on charging for federal services completed late last year, concluded that a user fee set to recover one-half of all federal waterway expenditures would increase the cost of waterborne grain shipments by about 9 cents per bushel by 1990. Assuming that only one-half of this increase were passed on to America's farmers, it would mean an additional transportation cost and a loss of gross annual revenue of about $1300 dollars for a typical 400 acre corn and soybean farm.

Increased user fees could seriously threaten the U.S. share of world grain exports. Loss of grain markets could further erode our balance of trade and would result in further transportation cost increases. The entire U.S. economy benefits from agriculture expanding its export markets. Conversely, adding to the cost of exporting our agricultural products will be a setback for the U.S. economy.

CONDITION OF THE BARGE INDUSTRY

We must consider the severe economic condition of our domestic water transportation industry. This industry is still in the throes of the recession. No recovery is foreseen for at least two years. It makes no sense for Congress to be advocating higher waterway user fees at this time.

The inland water transportation industry has been paying an escalating waterway user tax since 1980. This tax is scheduled to be increased 2 additional cents beginning in 1985. The tax has been accumulating in a trust fund that is mandated by law to be appropriated for construction, rehabilitation and replacement projects. These funds have never been spent. Title V treats this tax as part of the federal expenditure cap. It fails to credit the industry for the contribution that they are already making.

Mr. Chairman, let me also mention that I am interested in amending Title X to prevent taxes being imposed on the shallow draft coastal industry for deep draft channels. I believe it is totally inequitable to expect shallow draft operators to pay for deep draft channels from which they receive no benefit.

Once again, Mr. Chairman, I want to thank you for your efforts to bring this important matter to the Finance Committee. I am prepared to assist you in seeing that S. 1739 represents good water policy and good tax policy at the same time.

Senator **Packwood**. The hearing will come to order.

Bob, do you mind if we take the Senators in order of seniority? We have Senator Hatfield here.

Senator **Stafford**. I'm prepared to yield to Senator Hatfield.

Senator **Packwood**. Why don't you both sit there together.

These hearings today have been called because of a 30-day referral on the bill, S. 1739, involving user fees from the Committee on Environment and Public Works. And that deadline expires this Friday. I expect we will have a markup on this bill before then. We will finish our hearings today, work our will on it, and report it out in whatever fashion we finish it.

We do have today three Senators who have a deep interest in this bill: Senator Hatfield, my senior colleague from Oregon; Senator Stafford from Vermont; Senator Abdnor from South Dakota. And if we could take them in that order, I would appreciate it.

Mark.

STATEMENT OF HON. MARK O. HATFIELD, U.S. SENATOR FROM THE STATE OF OREGON

Senator **Hatfield**. Thank you very much, Mr. Chairman.

First of all, I would like to thank you for the opportunity to comment on Senate bill 1739. And I appreciate the Finance Committee's willingness to address some of the provisions of this legislation, which I think are clearly flawed.

I think it's somewhat ironic that the Bonneville replacement lock authorization is linked to such a bill. In my view, there are items clearly within this committee's jurisdiction that must be changed.

The first is the delegation of congressional taxing authority to the Secretary of the Army. Congress has not fully assessed, in my view, the impact that further user charges may have on the waterway operators of this country, and the Columbia/Snake system would be particularly vulnerable. As you are aware, I am concerned about the runaway deficit as anyone, and as chairman of the Appropriations Committee I am forced to deal with it on a very regular basis. But to allow a nonelected official the powerful authority to implement user charges on the inland water system without congressional review, I think, is unreasonable.

I would suggest the committee develop a study commission to review the needs and alternatives for user changes on our Nation's inland waterway system. And I refer to page 112, which is section 5 of the bill, beginning on line 13, which says the "Secretary is authorized to impose, collect, and obligate, use charges on the commercial users of the inland waterways and harbors of the United

States to the degree necessary for additional construction, rehabilitation, renovation, operation and maintenance and so forth." That's the part of the bill that I think is wrong.

I would urge the committee to be very careful in the composition of such a committee for such review and study to assure fair and equitable representation of all interests. And, further, Mr. Chairman, I believe that such a commission that makes this kind of a study should report to the tax-writing committees of both the Houses of the Congress rather than just to the President.

For port development, the concept in S. 1739 for studying the issue of user fees for operations and maintenance is probably the only politically salable direction to take at this time. Again, I would urge the committee to require any study commission to report to the tax-writing committees rather than to any other body, and to change the commission from being exclusively of the executive branch of Government to one that includes congressional interests.

There has been some controversy over consideration of a user fee for commercial channels and harbors. I think the real controversy, though, should surround the method for assessing such a fee rather than on the question of the assessment itself.

Congress has been embroiled in this debate for nearly 5 years, and now that S. 1739 chooses to study it further, it will be discussed, I'm sure, for some time to come.

Mr. Chairman, 1 year ago last October we started a staff working group to break this logjam and try to put together a compromise bill. Senate bill 865 is such a bill. Our approach to the fee was an ad valorem charge. It is not new to the transportation sector, but for port cost recovery, it is a slightly different twist.

I do not believe American commerce will be negatively affected by an ad valorem approach, and the issue of the cost operation and maintenance was also raised by the administration, suggesting that a cap be placed on O&M benefit paid by the Federal Government. The Environment and Public Works Committee also accepts this idea, and has incorporated it into S. 1739.

Mr. Chairman, our task force firmly rejected this concept. The net effect of such a cap would eliminate the commercial viability of over 100 ports across this country. In fact, the cap is interesting. It's less than the amount appropriated this year.

Mr. Chairman, I'm well aware of the need for waterway and port development in the near term, and I also believe that we have to assure the continued viability of the ports in order to help expand our markets and further diminish the trade deficit as well as to develop the trade potential. I also understand that this may not be the immediate time that this can be accomplished, but I do believe that the issue should be addressed in the near future through the matter of such a commission, as has been recommended. And I applaud the people for having made that proposal.

Mr. Chairman, let me make it very clear. Even though there are people who oppose the idea of cost sharing in port maintenance and operation and construction in the inland waterways—I am not one. I believe there should be some local cost sharing. But I do believe it is fundamental to put it on a basis which maintains the viability of these ports rather than destroy them.

When the administration came out with its proposal initially. we would have ended up on the west coast of the United States with basically three ports—Seattle, San Francisco, and Long Beach. Even if those three ports were working 24 hours a day, they could not handle the commerce that is exported. In fact, Portland happens to be the largest dry-cargo-exporting port on the coast. And so we have to look at a system that is not going to destroy the ports of this country, and maintain their viability; to provide some equitable form of cost sharing.

So even though I disagree with some parts of this bill, I think the Environmental Public Works Committee has done a yeoman's job in coming up with a draft of a vehicle that can raise this issue in the forum of the Finance Committee, the Energy Committee, and the Environment and Public Works Committee.

I thank you for the opportunity to make these remarks.

Senator Packwood. Thank you.

[The prepared written statement of Senator Hatfield follows:]

Senator Mark O. Hatfield
Testimony before the Taxation and Debt Management Subcommittee
Senate Committee on Finance
June 5, 1984

Deep-Draft Port Users Fees and S. 865

Mr. Chairman,

I appreciate the opportunity to present for the record my views on waterway and port development; specifically Senate Bill 1739.

I appreciate the Finance Committee's willingness to address some of the provisions of this legislation that are clearly flawed. It is ironic that the Bonneville replacement lock authorization is linked to such a bill. In my view there are items clearly within this committee's jurisdiction that must be changed.

The first is the delegation of Congressional taxing authority to the Secretary of the Army. Congress has not fully assessed the impact further user charges may have on the waterway operators of this country. The Columbia/Snake system could be particularly vulnerable. As you are aware, I am as concerned about the runaway deficit as anyone. As Chairman of the Appropriations Committee, I am forced to deal with it on a regular basis, but to allow a non-elected official the powerful authority to implement user charges on the inland waterway system without Congressional review is unreasonable. I would suggest the Committee develop a study commission to review the needs and alternatives for user charges on our nation's inland waterway systems. I would urge the Committee to be very careful in the composition of such a committee to assure fair and equitable representation of all interests. The commission should report to the tax writing committees of both Houses rather than to Congress as a whole, or to the President.

For port development, the concept in S. 1739 for studying the issue of user fees for operations and maintenance is probably the only politically salable direction to take at this time. Again, I would urge the Committee to require any study commission to report to the tax writing committees rather than to any other body and to change the commission from being exclusively of the executive department to one that includes Congressional interests.

I would like to take this opportunity to remind the Committee of a bill I introduced to equitably address the user fee question for operation and maintenance on commercial ports. Along with my colleagues, Senators Byrd, Warner, Mattingly and Thurmond we introduced S. 865.

There has been some controversy over consideration of a user fee for commercial channels and harbors. Many interests would suggest that the federal government has always paid for port operations and maintenance, and since the ports are clearly a national commercial resource, this system should continue. While we agree our ports are a national resource, I must say Mr. Chairman, in an era of $200 billion budget deficits, this attitude is short-sighted.

I believe a strong case can be made for requiring the user that benefits from quality ports to help defray some of the costs associated with O&M. In our bill we've recognized the national interest, and provided for only partial cost recovery; 40% to be borne by the user. But, this would be a substantial step forward to assure in the out-years, that our ports' O & M costs can be fully funded.

User fees are not new. We pay daily for our use of facilities and equipment. Good examples are, the highway tolls and the gasoline tax user fee and the Airport and Airways Development user fee. Even simpler things like state parks and parking garages all fit into this category. So why do we argue over O&M user fees, would they be different?

The real controversy should surround the proper method for assessing such a fee. Congress has been embroiled in this debate for nearly five years, and now that S. 1739 chooses to study it further, it will be discussed or some time to come.

A year ago last October, we started a staff working group to break this logjam and try to put together a compromise bill. S. 865 is such a bill. After years of controversy, we decided to approach this task with a strong foundation.

We began with these ideas:

-- The user fee must be nationally uniform across all commodities and all ports. Port specific fees for O & M must be rejected.

-- The fee must not cause any dislocation, diversion or loss of cargo into or out of the U.S.

-- There should be only partial cost recovery because of the national interest in keeping all ports open. No O & M payment cap should be considered.

-- The revenue from the fee must be placed in a trust fund dedicated to deep-draft O & M.

We also determined that any bill on commercial ports must recognize the difficulty inherent in moving forward with new water navigation projects.

This bi-partisan group believes we've put together a bill that meets all of these requirements, and a few more.

I would like to briefly discuss the O & M user fee embraced by S. 865.

Our approach to the fee - an ad valorem charge - is not new to the transportation sector, but for port cost recovery it is a slightly different twist. Our bill sets out a nationally uniform vessel charge for domestic, import and export traffic. The charge is based on the earning capacity of a vessel as measured by the value of its cargo, or ad valorem. A vessel carrying computer parts has a higher earning capacity than a vessel carrying sand and gravel, thus it should be charged fairly, based on that capacity.

This approach has numerous advantages over a tonnage approach. First, it can be uniformly applied to all cargos by a simple millage rate formula, bulk and container alike. It is market sensitive, moving up or down as the value of the cargo changes. The tonnage approach advocated by some belies the reality of commercial margins, especially bulk commodities which are the mainstay of our export market. Tonnage based fees would be arbitrary and dramatically affect our ability to trade in these goods. On the other hand, our approach understands the commercial margin, and provides for a charge that applies to all commodities that is uniform, fair and does not interfere with commerce.

A few simple examples:

Assuming an ad valorem charge of $.30 per $1,000 of value, which would raise approximately 40% of O & M (based on 1980 commerce figures).

-- The charge on a ton of wheat worth $135 per ton would be about $.04.

-- The charge on a barrel of oil worth $30 per barrel would be nine-tenths of one cent.

-- The charge on a container of NIKE athletic shoes (an Oregon company) worth $70,000 per container would be $21 or the equivalent of six-tenths of one cent per pair of shoes.

-- The charge on an imported car worth $8,000 would be $2.40.

-- And finally a $1,000 home computer would be charged a mere $.30.

I use these figures only to demonstrate the computation of the vessel charge.

Mr. Chairman, it is clear from these figures that American commerce should not be affected by the ad valorem approach. After consultation with the U.S. Customs Service and the Department of Treasury, we have devised a simple, easy method for making the assessment of the charge, and the subsequent collection.

A shipper will present to the master of the vessel a sworn declaration of value for the cargo being loaded. The vessel master shall be able to rely on this sworn declaration for purposes of the user charge and the Customs Service will then collect the charge based on the sworn declaration. Simple, direct and administratively cost effective.

The issue of the cost of operations and maintenance was also raised by the Administration, suggesting that a cap be placed on the O & M benefit paid by the Federal Government. The Environment and Public Works Committee also accepts this idea, and has incorporated it into S. 1739. We firmly rejected this concept. The net effect of such a cap would eliminate the commercial viability of over 100 ports across the country. The closure of these ports would also effect the national intermodal transportation system, by reducing the number of commercial options for the skipper. It could cause desperate economic dislocation for the states and communities that rely on the commerce of such ports. Such a cap would cause smaller ports with higher O & M costs to charge port specific fees, defeating the purpose of a rationally uniform O & M user fee.

Mr. Chairman, I am well aware of the need for waterway and port development in the near term to assure our continued ability to expand our markets and meet further trade potentials. I also understand that this is not the year to assess further user charges for operation and maintenance, since the political climate is not ripe. However, this is an issue we will have to address in the near future if we continue to suffer such substantial deficits. Our approach, S. 865, is clearly the most equitable. We have heard from wood products interests, farmers, oil companies, chemical companies, iron ore and steel companies, and others. All believe that the ad valorem approach, at the very low levels we suggest, is the only fair method for raising sufficient revenue to meet some of the O&M costs for the future. None of these groups advocate the implementation of user fees at this time. However, all realize the importance of being prepared for this eventuality, and S. 865 meets their test. I have raised this issue only to remind the Committee, and any eventual study commission of this reasonable approach.

I hope that my change in direction has not diverted the Committee away from the prime reason we are here today, and that is to correct the obvious problems with S. 1739. I have not bothered to discuss the other issues of concern with the bill that are outside this Committee's jurisdiction; those will be left for discussion and amendment on the Senate floor.

Thank you for considering this bill, and giving me the opportunity to share my views.

Senator PACKWOOD. Senator Stafford.

STATEMENT OF HON. ROBERT T. STAFFORD, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman. It's an honor and a pleasure to appear before this distinguished committee, especially in the company of my former colleague in the National Governor's Conference from some time ago, Mark Hatfield.

The reason I am here is to testify, as chairman of the Committee on Environment and Public works, on two provisions of S. 1739 that are before you on a limited referral.

Each of the two provisions of S. 1739 is controversial. Yet, each represents a carefully crafted effort by our committee to resolve a difficult issue.

I urge your committee to endorse our basic concepts. These concepts are needed, I believe, to obtain a Presidential signature on this important legislation.

Section 502 authorizes the Secretary of the Army, upon the recommendation of the Inland Waterway Users Board, also established in title 5, to set use fees on commercial waterway users, if the Board recommends such fees as a way to obtain additional construction and maintenance spending on the waterways.

Section 1006 authorizes non-Federal public bodies to charge use fees to cover the non-Federal share of the cost of harbor projects. Both sections are permissive. Neither requires fees. Neither of these proposals, of course, is popular with navigation interests.

Barge companies, in particular, oppose section 502. Many harbor interests do not want to pay any portion of new project costs as envisioned in title 10.

I recognize the problem. Business as usual is always attractive so long as it works.

Let me examine where we are. A growing list of needed navigation improvements exists at this time when spending is declining. It would be nice, Mr. Chairman, if our Nation could afford to construct each new project. It would be very nice if the Federal Government had the money to dredge the 30 or so ports in the competition for harbor projects with depths of 50 or 55 feet.

I wish we had the money to rebuild every aging lock and dam on our 25,000 miles of inland waterways. I also wish we had the money to build every flood protection levee that every local community finds necessary or desirable or to replenish every public swimming beach that nature is eroding. But we lack that kind of money.

Unlimited resources no longer exist for water resources. A look at the record of spending on water resources projects shows a steady decline over the past two decades. Specifically, the construction budget of the Corps of Engineers stands at just 23 percent of where it was 20 years ago in constant dollars.

I know of no one who believes that such a trend is likely to be reversed dramatically during this decade. Yet testimony shows clearly the need for new projects and additional investments.

That really is what S. 1739 is all about. It's an effort, if I may say so, to deal with the world as it really is, not as we might like it to be.

Let me first address the issue of inland waterways. Current law imposes an 8 cents per gallon fuel tax on operators on some of our waterways. That tax will bring in around $50 million this year, well under 10 percent of the Federal spending on the commercial components of our inland waterways.

The administration sent up legislation, which I introduced by request, S. 1554. That bill, which was referred to the Committee on Environment and Public Works, is attached to my statement for inclusion, if you will, in your hearing record.

[The attachment from Senator Stafford follows:]

Outline of Navigation Provisions of S. 1739

TITLE V (INLAND NAVIGATION)

-- Authorizes $895 million in new commercial inland waterway lock and dam projects.

-- Establishes an Inland Waterway Users Board to work with the Corps of Engineers to set the annual level of spending on the 25,000 miles of inland waterways. The board will be composed entirely of shippers and operators on the inland system.

-- Sets the future level of Federal support on commercial waterway at $646 million annually. (This figure was based on actual 1983 spending on commercial inland waterways; subsequent Corps of Engineers analysis shows the actual figure should be $658 million, a non-controversial change to be offered on the floor.)

-- Authorizes use charges to pay for spending, if any, above the annual base level ($646 million). Such spending can only occur if recommended by the Users Board.

-- Makes no change in the existing barge fuel tax. This tax, now 8 cents a gallon, raises about $50 million yearly.

TITLE X (DEEP-DRAFT HARBORS)

Maintenance:

-- Establishes a Commission, assisted by a Shipping Advisory Board, to make recommendations on potential harbor maintenance cost recovery, together with collection methods; no fees are set in this bill;

-- A cap on Federal harbor maintenance spending is set at $350 million yearly; the cap stays until Congress acts in some fashion on the commission's recommendation. (A subsequent Abdnor-Stafford-Bentsen-Moynihan amendment introduced in May raises that level to $420 million.)

Construction:

-- On new projects with depths no greater than 45 feet, a new cost-sharing ratio is set at 70 per cent Federal/30 per cent non-Federal; the non-Federal share is to be paid during construction for projects deeper than 25 feet. This change from 100 per cent Federal financing affects only projects not yet under construction.

-- On projects deeper than 45 feet, costs are to be 100 per cent non-Federal, with 70 per cent Federal loan guarantees, plus a 50 per cent Federal share on future maintenance. (The Abdnor-Stafford-Bentsen-Moynihan amendment raises the level of loan guarantees to 90 per cent.)

-- Creates a system for fast tracking necessary permits for harbor projects.

Senator STAFFORD. I emphasize it requires 70 percent cost recovery on all waterway expenditures now. In other words, the administration has proposed pushing user charges from $50 million a year up to about $450 million a year immediately.

For years, the commercial waterway operators have made the reasonable argument that they could accept user charges if the charges were brought on gradually, and if the operators have a say in how any user charge money is spent. That's precisely what title 5 and section 502 seek to do.

As reported, title 5 provides three basic initiatives intended to resolve the inland waterway debate:

First, five new lock and dam projects are authorized at a cost of $895 million.

Second, an annual level on direct Federal inland navigation spending is set for fiscal year 1986 and beyond at $646 million. This, frankly, is a snapshot figure. It is a figure based on actual 1983 spending levels on commercial inland navigation construction, operation, and maintenance. That figure is somewhat higher than the levels actually projected for 1984 and 1985 fiscal years.

Third, an Inland Waterway Users Board is created to recommend annually to the Corps of Engineers a commercial inland waterway spending program. If that recommendation is higher than the cap of $646 million, the users would be required to pay the differential above $646 million. If the recommendation were at or below the cap, there would be no additional user cost sharing that year.

Let me stress that: There would be no user fees in any year unless the User Board recommended a spending program above $646 million.

How much will this cost the users? Obviously, I can't answer that question. That answer depends solely on the basis of the recommendation by groups now arguing against title 5.

It has been argued that there is no ironclad link between the Board's recommendation and the fees. That is true. But two points are important:

The Users Board would control spending and users charges through a sense of the Congress declaration that the corps should follow the Board's recommendation, plus a requirement that these fees become a part of the annual budget and appropriations process.

The provision also recognizes that a percentage of inland waterway spending goes for noncommercial navigation; no limit is set, or fees required, on corps spending for noncommercial purposes.

I think it's important to note the obvious—any Users Board would serve as a powerful and effective watchdog over excessive Federal spending, since its members could be responsible for financing that excess spending.

It has been argued that the corps could override the Users Board and charge the users anything the corps wants to. While waterway interests have been told repeatedly that this is not the intention of the legislation, and that our committee would support any language needed to clarify that intent, no such language has been suggested to us.

Let me stress this fact: Our approach was designed as a compromise between the views of the administration—that is, 70 percent cost recovery now—and the views of the waterway industry—authorize new projects now, and study cost sharing in the future. Ours is a responsible, we believe, middle-ground position.

In committee, Senator Simpson offered an amendment to tighten the cap by $35 million annually. That amendment lost on an 8 to 8 vote. I voted with Senator Simpson. But the compromise bill was then reported by the committee and put out by a vote of 14 to 2, and personally I'm more than willing to stand behind what the committee has created. It's a sound program for sharing responsibilities.

Mr. Chairman, I recognize the political appeal of giving into the barge industry. I recognize the appeal of fogging the issue with yet another study. But I also recognize the fact that if we are to have an adequate inland waterway system to serve the needs of this Nation in the eighties and the nineties, we must somehow begin to tap new sources of funding in a responsible manner, and that is what this issue is all about.

Let me say a word about harbors, and then I will be done.

Title 10 of our proposed legislation appears to be somewhat less controversial than the part I have just been discussing. This deep-draft title was accepted in our committee on a voice vote.

Title 10, as reported by the committee would set a 30-percent non-Federal cost share on new harbor construction projects to depths of 45 feet or less; set a 100-percent non-Federal cost share on the few superport projects, that is those deeper than 45 feet.

It is the view of the Committee on Environment and Public Works that we have adopted a provision that will assure construction of the more economically viable projects more expeditiously, thus enabling our Nation to export coal at competitive prices at as early a date as possible.

A number of ports and shipping interests have worked with us to make the provisions more workable, particularly in relation to harbor projects deeper than 45 feet. They seem to recognize the value of 100 percent cost sharing as a way to filter out low priority work, and to move development along much faster than if the project had to wait for Federal appropriations.

As a result of these discussions, I was honored to join with our subcommittee chairman, Senator Abdnor, as well as Senators Bentsen and Moynihan, in sponsoring an amendment to title 10. We introduced this amendment before the recess; a copy of it is also attached to this statement and I would ask unanimous consent that it might be a part of the record.

Senator PACKWOOD. It will be placed in the record.

[The amendment from Senator Stafford follows:]

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RIVERS AND HARBORS PROJECTS

ABDNOR (AND OTHERS) AMENDMENT NO. 3137

(Ordered referred to the Committee on Finance.)

Mr. ABDNOR (for himself, Mr. MOYNIHAN, Mr. STAFFORD, and Mr. BENTSEN) submitted an amendment intended to be proposed by him to the bill (S. 1739) to authorize the U.S. Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; as follows:

On page 165, beginning with line 16, delete all through line 11 on page 176, and insert in lieu thereof the following:

"TITLE X—HARBORS

"SEC. 1001. (a) There is authorized to be established a National Commission on Harbor Maintenance (hereinafter in this title referred to as the "Commission"), which shall report to the President and the Congress no later than two years after the date of enactment of this Act on the annual and long-term costs of maintaining the Nation's harbors, and make such recommendations as it finds appropriate on what portion of the costs of such maintenance, if any, should be assumed by non-Federal interests. In the event the Commission makes recommendations for the non-Federal assumption of a portion of harbor maintenance costs, consideration shall be given without prejudice to the recovery of such costs through ad valorem based vessel charges, uniform national tonnage fees, port specific fees, and any other method of collection which the Commission may choose to consider.

"(b) The Commission shall be composed of the Secretary of the Army, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Agriculture, and a chairman to be appointed by the President.

"(c) The Commission shall weigh the interests of the port authorities, navigation districts, and similar organizations, as well as shippers and carriers of the United States and the impact on U.S. trade and the economy in making its recommendations, and shall include in its report an assessment of the impact of its recommendations on each of these interests.

"(d) To assist the Commission in its work, there is authorized to be established a Shipping Advisory Board to be composed of eleven members, selected by the Commission Chairman, to provide representation for the United States port interests from various coasts and the Great Lakes, both large and small United States ports, United States shippers of bulk and general cargoes, and United States carriers of both bulk and general cargoes.

"(e) To carry out the purposes of this section, there is authorized to be appropriated to the Commission for the fiscal year ending September 30, 1985, or thereafter, the sum of $3,000,000, such sum to remain available until expended.

"(f) Until such time as the report of the Commission is submitted to the Congress, and Congress acts by law to adopt, reject, or modify the recommendations, if any, of the Commission, the Secretary shall obligate from sums appropriated no more than $420,000,000 in any single fiscal year for the purpose of operating and maintaining the harbors of the United States.

"(g) Nothing in this section shall be construed to prohibit or otherwise interfere with the authority of the Secretary or other Federal agency to operate or maintain any harbor of the United States for emergency purposes or for purposes of Coast Guard navigation requirements, Department of the Navy navigation requirements, or requirements for vessels carrying military personnel and materiel.

"SEC. 1002. (a) The appropriate non-Federal interests shall be responsible for 50 per centum of the costs incurred by the Secretary for surveying, planning, designing, and engineering necessary prior to the construction of a general cargo harbor.

"(b)(1) A non-Federal interest may undertake a feasibility study for improvements to a general cargo harbor, and submit such study to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for harbor feasibility studies in order to provide sufficient information for the formulation of a plan of study.

"(2)(A) The Secretary shall review each feasibility study submitted by non-Federal interests for a general cargo harbor submitted under paragraph (b)(1) of this section for the purpose of determining whether or not such study was prosecuted in accordance with the guidelines promulgated under such paragraph and was developed in compliance with Federal laws and regulations applicable to navigation projects for harbors.

"(B) Not later than one hundred and eighty days after receiving any feasibility study under paragraph (b)(1) of this section, the Secretary shall transmit to the Congress, in writing, the results of such study and any recommendations the Secretary may have concerning the project described in such study.

"(3) The costs of studies made under this subsection shall be borne by the non-Federal interest, except that whenever a study results in the construction of a project, 50 per cent of the cost of such study shall be credited toward the non-Federal interest's cost-sharing requirement under section 1003 of this Title.

"Sec. 1003. (a)(1) The non-Federal share of the cost of construction of general cargo harbors on which construction has not been commenced as of the date of enactment of this Act shall be 30 per centum.

"(2) For purposes of this section, a project shall be deemed to have commenced construction if the non-Federal interest has entered into a written contract as of December 31, 1983, with the Secretary to provide local cooperation required pursuant to the project authorization, including, where applicable, an agreement under section 221 of Public Law 91-611, as amended.

"(b) Prior to Federal initiation of construction of a project approved pursuant to this section, or a general cargo harbor previously authorized by the Congress for which construction has not commenced under the terms of subsection (a)(2) of this section, the Secretary and the non-Federal interest shall enter into a cooperative agreement according to procedures set forth in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501). The non-Federal interest shall agree to:

"(1) provide to the Federal Government lands, easements, and rights-of-way, required for construction, operation, and maintenance of such project;

"(2) hold and save the United States free from damages due to the construction or operation and maintenance of such project except for damages due to the fault or negligence of the United States or its contractors; and

"(3) provide to the Federal Government the non-Federal share of all other contruction of such project: Provided, however, That the value and costs of providing lands, easements, and rights-of-way, shall be credited toward the non-Federal share of the cost of construction. Any cost differential needed to fulfill the non-Federal share shall be provided to the Federal Government on a pro rata basis during the period of construction, beginning not later than one year after construction is initiated.

"(4) In the case of general cargo harbor project planned to be constructed to a depth no greater than 25 feet below mean low water, the Secretary shall permit the cost differential in the non-Federal share to be repaid with interest over a period not to exceed 25 years from the date construction is initiated.

"Sec. 1004. (a) Any non-Federal interest is authorized to undertake navigational improvements in deep-draft harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

"(b) The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any study for improvements to deep-draft harbors of the United States which were initiated prior to the date of enactment of this Act, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (c) of this section.

"(c) When requested by an appropriate non-Federal interest, the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under subsection (a) of this section, and assist in obtaining all necessary permits: *Provided*, That the non-Federal interest contracts with the Secretary to reimburse the United States for the cost of such studies and engineering during the period that they are conducted.

"(d) The Secretary is authorized to complete deep-draft harbor construction projects for which construction was initiated by the Secretary prior to the date of enactment of this Act: *Provided*, That for projects in which the appropriate non-Federal interest has not entered into a written contract as of December 31, 1983, with the Secretary to provide the local cooperation required pursuant to the project authorizations, including, where applicable, an agreement under section 221 of Public Law 91-611, as amended, such non-Federal interest shall be required to contract with the Secretary to repay, within fifty years of the date of enactment of this Act, the cost of all such work undertaken after September 30, 1984, together with interest on the unpaid balance at a rate to be determined by the Secretary of the Treasury. The Secretary of the Treasury, in determining such rate of interest, shall consider the average market yields during the month preceding the fiscal year in which each advance is made on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the reimbursement period of the project.

"(e) Beginning on October 1, 1984, the Secretary shall undertake no construction work on any harbor except under the terms of this section, or sections 1003 or 1005 of this Title.

"(f) Whenever a non-Federal interest constructs improvements to any harbors, the Secretary shall be responsible for maintenance to forty-five feet below mean low water, and 50 per centum of the costs of incremental maintenance below forty-five feet below mean low water: Provided, That the Secretary certifies that the project is constructed in accordance with appropriate engineering and design standards.

"(g) Pursuant to subsection (a) of this section, the non-Federal interest shall provide 50 per centum of the costs expended on any relocation and alteration of existing pipelines, cables, and related facilities (but not to include any cost for upgrading or improvements to such pipelines, cables, and related facilities necessary for the construction of deep-draft harbors).

"Sec. 1005 (a) Nothing in this title shall be construed to prohibit or otherwise interfere with the Secretary or other Federal authority to operate, maintain, or improve any harbor for purposes of Coast Guard navigation requirements, Department of the Navy navigation requirements, or requirements for vessels carrying military personnel and materiel.

"(b) Any project authorized under the provisions of this section may include additional improvements requested by the appropiate non-Federal interest: Provided, That prior to the commencement of such improvements, the appropriate non-Federal interest enters into a contract with the Secretary or other Federal authority to pay, during the period of construction, that portion of the project's cost which the Secretary or other Federal authority determines to be allocable to non-defense-related needs, if such project is a deep-draft harbor, or 30 per centum of the cost during the period of construction, if such project is a general cargo harbor. If such non-Federal interest fails to so participate, the Secretary or other Federal authority shall design such project solely to meet national defense requirements.

"(c) If non-Federal interests undertake a project under the terms of section 1004 of this title which can be expected to provide direct benefits to the national defense requirements of the United States, the Secretary of other Federal authority is authorized prior to the commencement of construction to contract with such non-Federal interests, subject to appropriations Acts, to pay, during the period of construction, that portion of the project costs directly attributable to national defense-requirements, as defined in subsection (a) of this section.

"(d) Whenever the Secretary undertakes improvements to a general cargo harbor, the Secretary is authorized to reduce the percentage share of commitment required by the non-Federal interest on a proportional basis related to that portion of the traffic that provides direct benefits to the national defense requirements of the United States.

"Sec. 1006. (a) Notwithstanding any other provision of law, any appropriate non-Federal interest, upon enactment of this Act and in accordance with the provisions of this section, is authorized to recover its obligations for construction under the terms of Sections 1003, 1004, or 1005 of this title, together with its costs for incremental maintenance work undertaken pursuant to section 1004 of this title, including associated administrative expenditures, by the collection of fees for the use of such projects by vessels in commercial waterway transportation. Such fees shall be established after a public hearing held pursuant to State law and shall reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

"(b) Fees collected by a non-Federal interest pursuant to the authority of this Section shall be used only for the purpose of paying for the non-Federal share of the cost of construction and incremental maintenance work on harbors, or any obligations undertaken for that purpose.

"(c) Fees authorized by this section shall not be imposed on:

"(1) vessels owned and operated by the United States or any other nation or any political subdivision thereof and not engaged in commercial service;

"(2) vessels used by a State or political subdivision thereof in transportating persons or property in the business of the State or political subdivision and not engaged in commercial service;

"(3) vessels in intraport movements; and

"(4) vessels with design drafts of 14 feet or less.

"Sec. 1007. (a) Upon the application of the appropriate non-Federal interest, the Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, up to 90 per cent of any obligation issued by a non-Federal interest to finance the non-Federal portion of the cost of a general cargo harbor or deep draft harbor undertaken under the terms of this title.

"(b) An obligation guaranteed under this section shall have a maturity date not to exceed 50 years or the useful life of the project, whichever is less.

"(c) The costs that shall be financed by a guaranteed obligation shall include the associated costs of the project including environmental mitigation, the acquisition and preparation of dredge spoil disposal sites, easements, rights of way, and similarly related costs.

"(d)(1) The non-Federal interest shall convey to the Secretary such security interest in the project as the Secretary may reasonably require to protect the interests of the United States.

"(2) The non-Federal interest shall not be required to convey a security interest in any asset other than those which are a part of the project, nor to provide any additional collateral or guarantees to the Secretary.

"(3) The security interest in the project conveyed to the Secretary shall be subordinate to any lender's security interest covering funds provided to the non-Federal interest for the project, but not covered by the guarantee of the Secretary.

"(e) The full faith and credit of the United States is pledged to the payment of any guarantee made under this section with respect to both principal and interest, including interest as provided for in the guarantee occurring between date of default on a guaranteed obligation and the payment in full of the amount guaranteed.

"(f) Any guarantee or commitment to guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligation for that guarantee, and the validity of any commitment to guarantee so made shall be incontestable.

"(g) The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any time shall not exceed $2,000,000,000. No additional limitations may be imposed on commitments to guarantee obligations for any fiscal year, except in such amounts as those established in advance in authorization Acts.

"(h) The Secretary shall assess a guarantee fee of not less than one-quarter of one per centum per annum, nor more than one per centum per annum of the average principal amount of a guaranteed obiigation outstanding. All monies received by the Secretary shall be deposited in general fund of the Treasury.

"(i)(1) In the event of a default, which has continued for 30 days, in any payment of the non-Federal interest of principal or interest due under an obligation guaranteed under this section, the obligee or his agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of that default, payment by the Secretary of the unpaid principal amount of that obligation and of the unpaid interest thereon to the date of payment. Within such a period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of that demand, the Secretary shall promptly pay the obligee or his agent the unpaid principal amount of that obligation and unpaid interest to the date of payment. The Secretary shall not be required to make that payment if, prior to the expiration of that period, he shall find that there was no default by the obligor in the payment of principal or interest or that the default has been remedied prior to any such demand.

"(2) Any amount required to be paid by the Secretary under this section shall be paid in cash.

"(3) In the event of any default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the non-Federal interest or any other parties liable thereunder that, in the Secretary's discretion, may be required to protect the interests of the United States. A suit may be brought in the name of the United States or in the name of the obligee, and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary shall have the right, at the Secretary's discretion, to accept a conveyance of title to a possession of property from the non-Federal interest or other parties liable to the Secretary, and may purchase the property for an amount not to exceed the unpaid principal amount of the obligation and interest thereon. In the event the Secretary shall receive, through the sale of property, an amount of cash in excess of any payment made to an obligee under this section and the expenses of collection of those amounts, the Secretary shall pay that excess to the non-Federal interest.

"(4) The Secretary may not issue a guarantee when the interest is exempt from Federal income tax under section 103 of the Internal Revenue Code of 1954.

"(5) To make any payments required under any guarantee under this section, there is authorized to be appropriated to the Secretary such sums as may be necessary."

Renumber following sections accordingly.

● Mr. ABDNOR. Mr. President, as part of the continuing effort of the Committee on Environment and Public Works to bring about passage of water resource development legislation this year, I am today submitting an amendment to the harbor development title of S. 1739 on behalf of myself, Senator STAFFORD, Senator BENTSEN, and Senator MOYNIHAN.

This amendment addresses many of the concerns which have been raised over this title by the ports, the banking community, and my colleagues in the Senate. I would hope that the Finance Committee on its review of section 1006 would consider this version in its deliberations, which are to conclude June 8. The changes embodied in this amendment are intended to clarify the intent of certain provisions and improve the ability of non-Federal project sponsors to finance port projects, while protecting those interests who utilize our harbors but woud not benefit from further harbor improvements.

The major changes to title X in this amendment are:

The mission of the National Commission on Harbor Maintenance is clarified to make explicit the fact that the Commission is to address whether any cost recovery for port maintenance is appropriate. If the Commission determines recovery is appropriate, ad valorem and tonnage based recovery methods will be evaluated.

Eligibility for Federal guarantees of loans for the non-Federal share of project costs is extended to general cargo port projects as well as deep draft projects.

The level of the Federal guarantee is increased to 90 percent from 70 percent.

The total obligations guaranteed at any one time is increased to $2 billion.

In those cases where a general cargo harbor would be constructed to a depth of no more than 25 feet the non-Federal share is to be repaid with interest over a period not to exceed 25 years.

The provision mandating that 80 percent of any fees imposed for the recovery of the non-Federal cost-share be imposed on vessels requiring the deeper harbor draft is replaced with a provision that fees shall be established only after a public hearing and shall reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

Fees which may be imposed by ports to recover their share of project costs may not be imposed on vessels engaged in intraport movements or vessels with design drafts of 14 feet or less. This is to clarify that barges are not to be assessed fees for deepening ports.

Mr. President, I hope my colleagues will review this amendment and work with me to secure a time agreement to bring S. 1739 to the floor following the Memorial Day recess. I hope too, that they will see in this amendment my continued desire, and the desire of my cosponsors, to work diligently for the compromises which are necessary to make passage of a workable water resource development bill a reality. The Nation needs this legislation and it can only secure passage if my colleagues in the Senate who support responsible water project development work together to secure floor action on this bill this year.●

● Mr. MOYNIHAN. Mr. President, America's ports are ready to move forward with the improvements that are needed to insure the efficient transport of goods. They are ready to pay for these improvements. But the dredges will remain idle until Congress enacts a water resources bill establishing new policies on port development.

The causes of the impasse are well known. No new deep draft harbor projects have been authorized since 1970 because we have yet to agree on a national water policy. A major component of this policy will be a cost sharing formula under which the users of the Nation's ports contribute to future improvements.

Many proposals have been put forward. Last year I introduced S. 970, which would require cost sharing for new construction and for port maintenance. It has been especially difficult to obtain a consensus on how to finance maintenance. We have debated the merits of uniform and port-specific schemes, tonnage fees and ad valorem taxes. Each formula affects each port in a different way.

Yet we can all agree on some basic principles. Federal spending on ports, as for other purposes, must be controlled. Those who benefits from port improvements—new, deeper, or wider channels—should share the costs. Projects must be economically justified. Finally, port development must proceed.

Title X of S. 1739, the water resource bill approved last November by the Committee on Environment and Public Works, adheres to these principles. The bill requires a modest non-Federal contribution of 30 percent of costs for channel improvements up to a 45-foot depth. The ports themselves would pay the full costs of construction for projects deeper than 45 feet. This insures a central role for economic criteria in the decisions on where to build superports. If Congress had to authorize and fund these large projects on an individual basis, few if any would be built in the near future. Under the bill, the Federal Government would still provide substantial aid in the form of loan guarantees and harbor maintenance.

While I regard this approach as essentially sound, I am joining my colleagues in proposing an amendment to make the proposed new policy work better. These changes are intended to enhance the feasibility of non-Federal financing of harbor improvements. One must recognize the distinction between economic and financial feasibility. It could be difficult, because of the high risks involved, for port authorities to raise capital even for projects with large projected net benefits.

Although a variety of changes are included in the amendment, two are key. First, Federal loan guarantees will cover 90 percent of non-Federal project costs instead of only 70 percent. Second, the amendment modifies the restrictions on non-Federal user fees, which are allowed but not required. The changes would, quite simply, enable port authorities to raise funds for needed projects.

I encourage all Senators to study this amendment carefully. I view it as another step toward a fair, feasible, and cost-effective ports policy.●

Senator STAFFORD. The major change in the amendment sets the level of Federal loan guarantees at 90 percent, rather than 70 percent. Our amendment also clarifies the language in section 1006 to assure the harbors have some flexibility in setting use fees, provided there can be no title 10 charges at all on shallow draft barges.

Mr. Chairman, the conclusion of our committee is this: If there is only so much Federal money available for harbor work, we believe it should be focused on maintenance of existing harbors, with some for construction of general purpose harbors. And to obtain the great economic returns of superports, shippers should be willing to pay somewhat higher port fees.

To be of further assistance to you in your deliberations, I ask that you include as a part of your hearing record some appropriate portions of our committee report, which I have attached to this statement and I ask unanimous consent that they be a part of the record also.

Senator PACKWOOD. They will be a part of the record.

[The portions of the committee report from Senator Stafford follow:]

NAVIGATION

Controversy over the Nation's water resources policy has delayed the authorization of new navigation improvements, as well as the appropriation of funds for projects already authorized.

Historically, the Federal Government has financed the full cost of constructing, rehabilitating, maintaining, and operating the commercial waterways and ports of the United States.

To meet growing navigation needs, while imposing a reasonable market test on what is clearly commercial development, the bill contains two titles that establish new policy on inland and harbor development. These are discussed separately below.

Under specified constraints, title V authorizes use fees on the inland system. Title X authorizes non-Federal public interests to collect use fees to reimburse themselves for expenses under that title. Neither title mandates use fees.

The constitutionality of such charges has been questioned, as it is argued that such fees represent a tax or a duty. The recovery of costs for inland waterway or port improvements are not a tax, duty, or excise on commerce between States or other nations. The fees contemplated in this legislation are not for the purpose of raising revenue. Rather, they are to pay costs incurred in servicing commerce. The fees offset a service rendered to the vessels. The provision of a channel or a lock by the Corps or another agency is as surely a service rendered to the shipper as pilotage, dockage, wharfage, or the many other services provided to that vessel.

INLAND NAVIGATION

In 1978, Congress enacted Public Law 95-502, legislation that authorized a major improvement at Locks and Dam 26 on the Mississippi River and imposed a fuel tax on the more heavily used commercial waterways. That tax, currently 8 cents per gallon of fuel, returns to the Treasury about $50,000,000 yearly. It is unrelated to expenditures. The direct Corps of Engineers expenditures on the commercial components of the inland waterways during fiscal year 1983 totalled $646,000,000. Thus, the fuel tax recovered less than 10 percent of annual expenditures by the Corps of Engineers.

A variety of studies indicate that the United States is falling behind in rehabilitating the existing system of inland waterways. In its draft National Waterways Study, the Corps of Engineers concluded that the demands for rehabilitating and modernizing the waterways could prove costly over coming decades. Twenty years from now, 97 inland locks will be at least 50 years old; half of these are used intensively.

According to General J. K. Bratton, Chief of Engineers, 31 locks in the system will "become overly congested or reach their capacity by the year 2003. . . . A total capital investment of between $5.2 billion and $12 billion may be needed by 2003 to rehabilitate and improve the existing system."

This demand occurs at a time when Federal budget constraints will most surely continue. Given the unlikely event that new infusions of Federal revenues will be available to the system, two options exist:

—Sources of non-Federal funds must be found to assist in this needed work, or

—Our Nation will continue to fall behind in meeting the needs of commercial inland navigation.

The first alternative is preferable. Title V provides a fair and balanced program for meeting future needs of the inland waterways of the United States, while providing a market test of priority work.

Earlier this year, the Administration proposed immediate user fees sufficient to recover 70 percent of inland navigation costs. The proposal was introduced as S. 1554. The waterway industry testified against any change in current Federal responsibilities. Its two strongest arguments were these:

(1) The barge industry is currently in a depressed condition and cannot afford to absorb any major imposition of use charges at this time, and

(2) The industry deserves a say in how any such use charges are utilized, if fees are to be paid.

Title V takes these arguments into account while limiting Federal expenditures on the inland system. No use fees would be established, but a mechanism would be put into place to institute fees should they become necessary. The industry would play a strong role in deciding how much money should be spent on the system. The spending levels would, in turn, determine the level of any use fees.

The bill establishes a cap on obligations for the overall system at $646,000,000 per year, beginning in fiscal year 1986. That figure represents total Federal spending in fiscal year 1983 on this program—construction, rehabilitation, operations, and maintenance—as determined by the Congressional Budget Office. The CBO calculation, developed in consultation with the Corps of Engineers, shows that $351,000,000 was spent on construction of the commercial aspects of the inland system, $236,000,000 was spent to maintain those commercial aspects, and $59,000,000 was that portion of the Mississippi River and Tributaries account attributed fairly to commercial navigation. That 1983 total of $646,000,000 compares with $593,000,000 that was appropriated for fiscal year 1984 for these purposes.

The cap would be in place beginning in fiscal year 1986, and would remain in effect through the remainder of the century. Should needs ever exceed that specified figure, due to increased demands or the effects of inflation, then the excess costs would be borne by the direct commercial beneficiaries.

This mechanism assures that any shift toward the use of non-Federal funds will prove gradual, and should be assimilated without strain by the users.

In order to provide users a role in determining the level of spending on the inland system—and the resultant use fees—the bill establishes an Inland Waterways Users Board. The 21-member Board would advise the Corps of Engineers on the spending needs for future years.

This Board is key to the philosophy of the bill. It would be composed of representatives of commercial barge companies, as well as the agricultural community, coal and petroleum shippers, and other industries associated wih commodity shipments dependent on waterways for transportation.

The Board will meet at least annually to make a recommendation on spending levels to the Secretary of the Army. While there is no legal requirement that these recommendations be adopted, it is expected that the Secretary will adopt it for inclusion in the President's Budget for the next fiscal year.

For example, if the Board recommends $646,000,000, or less, the Secretary shall obtain all the needed funds from general revenues and the existing Inland Waterways Trust Fund. If the recommendation is higher, say $696,000,000, the Secretary is authorized to obtain the differential—$50,000,000 in this example—from use charges on the inland system, use charges that would be at the start of the next fiscal year. Those additional funds (the $50,000,000) would be utilized during that fiscal year solely for work on the commercial components of inland system.

According to figures provided by the Corps of Engineers, the cost of the new locks included in this bill, as well as one not yet approved by the Chief of Engineers, is $1.5 billion, including inflation. Spread over a 10-year construction period, the spending peak will occur in fiscal year 1990, when $277,000,000 is required. If that were to occur, together with other work of the system, some direct user contribution would almost certainly prove necessary. But that expense could be lessened, or even avoided, by stretching out the construction period or providing offsetting savings in other areas of the commercial inland program.

Little incentive now exists to use inland maintenance funds very efficiently. The waterways industry generally opposes any reduction in the operation of locks, even on some rarely used waterways. For example, reductions in nighttime operations at some little-used locks might be achieved, with the savings transferred to more cost-effective projects. Such transfers would be encouraged under the provisions of Title V.

The question inevitably arises: How much will this system cost the users? A precise answer cannot be given. How much the users will pay, if anything, depends on the spending recommendation of the Users Board. To reiterate, the users will pay nothing until annual spending exceeds the $646,000,000 cap.

If use charges become necessary, the Users Board would recommend the levels and type of fees to be imposed. For example, the Board could recommend a system-wide charge, or a fee that varies by waterway, or some other type of fee. It is possible that the Users Board would recommend one level of fees on the Mississippi-Ohio-Missouri system, and a different level on the unrelated columbia River system.

The type of fee would be up to the Board. The Secretary would be expected to carry out that recommendation.

Title V also refines the definition of the inland system and breaks out the commercial components of that system. The $646,000,000 limitation, and any use charge, relates only to those features and components of the system that are for commercial navigation. The users should not, and will not, pay costs unrelated to their benefits, such as the flood control components of any inland project.

The spending cap includes expenditures from the existing Inland Waterways Trust Fund, established pursuant to the 1978 Act, as well as general revenues. Today's spending level—and its impact on the deficit—has no bearing on whether that spending comes from general revenues or the Trust Fund. Thus, both sources of revenue must be treated as a whole; any shift from one to the other represents an accounting question.

The Inland Waterways Trust Fund, as established in 1978, is to be used only for construction activities, including replacement of facilities currently in operation. This title does not change the statutory requirement. Funds raised from the fuel tax are not available for routine maintenance or rehabilitation.

Funds should be released automatically from the Trust Fund, pursuant to section 204 of Public Law 95-502, and those funds should be available for obligation by the Secretary under the limitation imposed by section 501 of this Act.

Different portions of the same river system fall within this title and title X. For example, the Mississippi System as far south as Baton Rouge, La., is considered a component of the inland system; below Baton Rouge it would fall under the provisions of title X. That portion of the Columbia River upstream of Bonneville Lock and Dam (including the actual lock and dam) falls under title V, while the navigational work downstream from Bonneville Dam comes under title X.

This bill does not address the inland waterways controlled by the Tennessee Valley Authority. Technical amendments on the Senate floor may be necessary to assure conformity.

HARBORS

The advent of deep-draft vessels demonstrates the economic value of these vessels in moving bulk cargoes. When the United States began to increase its imports of crude oil and petroleum products during the 1970's, the constraints of relatively shallow harbors added to costs. Similarly, as foreign sales of U.S. coal increased, the study of deeper draft U.S. harbors was accelerated. Deeper draft harbors also offer benefits for other bulk commodities, such as grain and ores.

Title X affirms the Federal commitment to our harbors. If this nation is to continue its pre-eminent role in world commerce, a clear Federal policy for the construction and maintenance of harbors is essential.

While it retains the current Federal responsibility for maintenance, title X authorizes a Commission to study cost sharing for maintenance. More significantly, it introduces the concept of cost sharing for the construction of new harbors. While the bill retains the traditional Federal authorizing process for general cargo harbors (those with a depth of 45 feet or less), it establishes new policy for deeper draft harbors, a policy that relies on a market test by the private sector.

During the 97th and 98th Congresses, the Committee considered a variety of harbor policy proposals. These proposals have ranged from no Federal funding to trust funds with entitlements for construction. Alternatives for maintenance have ranged from diverting a portion of customs revenues for harbors work to national uniform or port-specific user fees.

Each of the maintenance funding proposals has been challenged as weighted to favor one type of harbor over another. In some instances the issue is between high maintenance harbors and low maintenance harbors; in others it is between large ports and small ports; in others it is between bulk cargo and containerized cargo ports. This issue appears unresolvable using information now available. The Commission will evaluate this issue and report to Congress on alternatives for future maintenance cost-sharing. Until a decision is made by Congress, the Corps must limit its annual harbor maintenance spending each year to $350,000,000.

To develop a realistic approach to harbor construction, title X defines two types of harbors: general cargo harbors and deep-draft harbors. General cargo harbors are basically those of 45 feet and shallower depth. Deep-draft harbors are harbors greater than 45 in depth.

General cargo harbors provide the major conduit for the flow of goods abroad, as well as some interstate movements such as petroleum products shipped from the Gulf Coast to the East Coast. The retention of strong Federal support for general cargo harbors remains justified.

Title X retains the current Federal process for authorizing general cargo harbors, with an appropriation of funds for construction. It establishes a 30 percent non-Federal cost share for such construction, to be provided during the period of construction of the harbor.

A separate policy is appropriate for deep-draft harbors. At issue is how to build rapidly those deep draft harbors necessary for international commerce, without spreading limited Federal funds too thinly. Continued use of current policy would produce two detrimental effects.

First, the Federal Coal Export Task Force identified 34 ports as potential sites for major coal export harbors. Other ports believe that they can justify a deep-draft project on the basis of oil and other commodity movements. Under the current authorization and appropriation process, no incentive exists to identify the two or three priority projects for early deep-draft construction.

Second, it is highly unlikely that the Federal Government would finance construction in a timely manner, when most studies estimate the cost of these projects at close to half a billion dollars each.

Consequently, title X provides a new Federal role in improving and maintaining deep-draft harbors. Under the new program, non-Federal interests would pay the full cost of constructing deep-draft harbors. They could either build the project themselves, or request the Corps to construct it, then reimburse the Federal Government during construction.

To assist non-Federal interests, the Federal Government would provide loan guarantees for up to 70 percent of the construction costs, then pay half the incremental maintenance costs of the deep-draft harbor.

This approach will encourage the market place to determine which deep-draft harbors should be constructed. It allows those deep-draft harbors that can obtain financing to be constructed expeditiously, while retaining a substantial Federal role in both the construction and maintenance of deep-draft harbors.

Under present law the evaluation of navigation benefits centers on the reduction in the cost of transporting goods. Transportation savings should result from the use of larger vessels, reduction in transit time, lower cargo handling and tug assistance costs, and reduced storage costs. If the Federal Government uses that evaluation to justify a $500,000,000 project to the Congress, a similar analysis should be as compelling to non-Federal financing bodies. Otherwise, the very basis of the Corps' evaluation procedures must be questioned.

As proposed by the Corps of Engineers, each of its three initial deep-draft reports—Norfolk, New Orleans, and Mobile—carried a cost estimated at $500,000,000. Since the discussion of cost-sharing arose, non-Federal interests at each of these ports have begun to consider less costly projects that would achieve a deep-draft capability in a more cost-efficient manner.

This would never have occurred using the traditional approach. This search for cost-effectiveness comes only as it becomes clear that the beneficiaries will need to finance a part of the cost.

Senator **Stafford**. Mr. Chairman, I wish to thank you and the members of your distinguished committee for this opportunity to testify. While I am not as familiar personally as some of the other members of our committee are with all of the details of title 5 and 10, I have been pleased to have this opportunity to discuss them with you. I am delighted that I'm accompanied by the chairman of our subcommittee, who was so instrumental in fashioning this entire bill, Senator James Abdnor, who will speak next.

[The prepared written statement of Senator Stafford follows:]

Statement before the Committee on Finance
on S. 1739
Sen. Robert T. Stafford
Chairman
Committee on Environment and Public Works
2 p.m., June 5, 1984

Mr. Chairman, it is an honor and a pleasure to appear before this distinguished Committee.

The reason I am here is to testify, as chairman of the Committee on Environment and Public Works, on two provisions of S. 1739 that are currently before you on limited referral.

Each is controversial.

Yet each represents a carefully crafted effort by our Committee to resolve a difficult issue.

I urge your Committee to endorse our basic concepts. These concepts are needed, I believe, to obtain a Presidential signature on this important legislation.

Section 502 authorizes the Secretary of the Army, upon the recommendation of the Inland Waterway Users Board, also established in Title 5, to set use fees on commercial waterway users, if the Board recommends such fees as a way to obtain additional construction and maintenance spending on the waterways.

Section 1006 authorizes non-Federal public bodies to charge use fees to cover the non-Federal share of the cost of harbor projects.

Both sections are permissive. Neither requires fees.

Neither of these proposals, of course, is popular with navigation interests.

Barge companies, in particular, oppose Section 502.

Many harbor interests do not want to pay any portion of new project costs, as envisioned in Title 10.

I recognize the problem. Business as usual is always attractive. So long as it works.

Let me examine where we are. A growing list of needed navigation improvements exists at this time when spending is declining.

It would be very nice if our nation could afford to construct each of them.

It would be very nice if the Federal Government had the money to dredge the 30-or-so ports in the competition for harbor projects with depths of 50 or 55 feet.

I wish we also had the money to rebuild every aging lock and dam on our 25,000 miles of inland waterways.

I also wish we had the money to build every flood protection levee that every local community finds necessary, or to replenish every public swimming beach that nature is eroding.

But we lack that kind of money.

Unlimited resources no longer exist for water resources.

A look at the record of spending on water resources projects shows a steady decline over the past two decades.

Specifically, the construction budget of the Corps of Engineers stands at just 23 per cent of where it was 20 years ago, in constant dollars.

I know of no one who believes that such a trend is likely to be reversed dramatically during this decade.

Yet testimony shows clearly the need for new projects and additional investment.

That is what S. 1739 is all about. It is an effort, if I may say so, to deal with the world as it really is, not as we would like it to be.

Inland Waterways

Let me first address the issue of inland waterways.

Current law imposes an 8 cents per gallon fuel tax on operators on some of our waterways. That tax will bring in around $50 million this year, well under 10 per cent of Federal spending on the commercial components of our inland waterways.

The Administration sent up legislation, which I introduced by request -- S. 1554.

That bill, which was referred to the Committee on Environment and Public Works, is attached to my statement for inclusion in your hearing record. It requires 70 per cent cost-recovery on all waterway expenditures now.

In other words, the Administration has proposed pushing user charges from about $50 million a year up to about $450 million a year. Immediately.

For years, the commercial waterway operators have made the reasonable argument that they could accept users charges if the charges were brought on gradually, and if the operators have a say in how any user-charge money is spent.

That is precisely what Title 5 and Section 502 seek to do.

As reported, Title 5 provides three basic initiatives intended to resolve the inland waterway debate:

-- First, five new lock and dam projects are authorized at a cost of $895 million.

-- Second, an annual level on direct Federal inland navigation spending is set for fiscal year 1986 and beyond at $646 million. That is a snapshot figure. It is a figure based on actual 1983 spending levels on commercial inland navigation construction, operation, and maintenance. That figure is somewhat higher than the levels actually projected for 1984 or 1985.

-- Third, an Inland Waterway Users Board is created to recommend annually to the Corps of Engineers a commercial inland waterway spending program. If that recommendation is higher than the cap ($646 million), the users would be required to pay the differential above $646 million. If the recommendation were at or below the cap, there would be no additional user cost-sharing that year.

Let me stress that: There would be no user fees in any year unless the User Board recommended a spending program above $646 million.

How much will this cost the users?

Obviously, I cannot answer that question. That answer depends solely on the basis of the recommendations by groups now arguing against Title 5.

It has been argued that there is no iron-clad link between the Board's recommendation and the fees. That is true. But two points are important:

-- The Users Board would control spending and users charges through a sense of the Congress declaration that the Corps should follow the Board's recommendation, plus a requirement that these fees become a part of the annual Budget-Appropriations process;

-- The provision also recognizes that a percentage of inland waterway spending goes for non-commercial navigation; no limit is set, or fees required, on Corps spending for non-commercial purposes.

I think it is important to note the obvious -- any Users Board would serve as a powerful and effective watchdog over excessive Federal spending, since its members could be responsible for financing that excess spending.

It has been argued that the Corps could override the Users Board and charge the users anything the Corps wants to. While waterway interests have been told repeatedly that this is not the intention of the legislation, and that our Committee would support any language needed to clarify that intent, no such language has been suggested.

Let me stress this fact: Our approach was designed as a compromise between the views of the Administration (70 per cent cost recovery now) and the views of the waterway industry (authorize new projects now, and study cost sharing in the future). Ours is a responsible middle-ground position.

In Committee, Senator Simpson offered an amendment to tighten the cap by $35 million annually. That amendment lost on a vote of 8-to-8. I voted with Senator Simpson.

The compromise bill was then reported by Committee on a vote of 14-to-2.

Personally, I am willing to stand behind what the Committee has created. It is a sound program for sharing responsibilities.

Mr. Chairman, I recognize the political appeal of giving into the barge industry. I recognize the appeal of fogging the issue with yet another study.

But I also recognize the fact that if we are to have an adequate inland waterway system to serve the needs of this nation in the 1980's and 1990's, we must, somehow, begin to tap new sources of funding in a responsible manner. That is what this issue is all about.

I urge your support.

Harbors

Now, let me turn briefly to the harbor provision of the bill. Title 10 appears somewhat less controversial. This deep-draft title was accepted in Committee on a voice vote.

Title 10, as reported by the Committee, would:

-- Set a 30 per cent non-Federal cost-share on new harbor construction projects to depths of 45 feet or less;

-- Set a 100 per cent non-Federal cost-share on the few "superport" projects (those deeper than 45 feet).

It is the view of the Committee on Environment and Public Works that we have adopted a provision that will assure construction of the more economically viable projects more expeditiously, thus enabling our nation to export coal at competitive prices at as early a date as possible.

A number of ports and shipping interests have worked with us to make the provisions more workable, particularly in relation to harbor projects deeper than 45 feet. They seem to recognize the value of 100 per cent cost-sharing as a way to filter out low-priority work, and to move development along much faster than if the project had to wait for Federal appropriations.

As a result of these discussions, I was honored to join with our Subcommittee chairman, Senator Abdnor, as well as Senators Bentsen and Moynihan, in sponsoring an amendment to Title 10. We introduced the amendment before the recess; a copy is attached with this statement.

The major change in the amendment sets the level of Federal loan guarantees at 90 per cent, rather than 70 per cent. Our amendment also clarifies the language in Section 1006 to assure the harbors have some flexibility in setting use fees, provided there can be no Title 10 charges at all on shallow draft barges.

Mr. Chairman, the conclusion of our Committee is this: If there is only so much Federal money available for harbor work, we believe it should be focused on maintenance of existing harbors, with some for construction of general purpose harbors. And to obtain the great economic returns of superports, shippers should be willing to pay somewhat higher port fees.

To be of further assistance to you in your deliberations, I ask that you include as a part of your hearing record some appropriate portions of our Committee report, which are attached.

Mr. Chairman, I thank you for this opportunity to testify. While I am not as familiar as some other of our Committee members with every detail of Titles 5 and 10, I shall be pleased to try to respond verbally or in writing to any questions that you may have.

Thank you.

STATEMENT OF HON. JAMES S. ABDNOR, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator Packwood. Senator Abdnor.

Senator Abdnor. Thank you, Mr. Chairman, and members of the committee.

First let me say it was a real pleasure to work with my chairman on this. He was very helpful. We had many points of disagreement throughout the proceedings, but he was always there to back up whatever the committee, the majority decided on.

I would first like to ask unanimous consent that my statement be made a part of the record along with the amendment that was presented.

[The prepared statement of Senator Abdnor follows:]

Statement of Senator James Abdnor to the Finance Committee
June 5, 1984

Mr. Chairman, it is an honor to appear before the Finance Committee today as you review sections 502 and 1006 of S. 1739, the Water Resources Development Act of 1983.

Mr. Chairman, I want to outline these two provisions and how the Committee on Environment and Public Works came to include them in S. 1739. But first, I want to emphasize the need for S. 1739.

It has been said often enough, but let me say it again, there has not been a water resources omnibus bill in eight years. Mr. Chairman, this has led to a 70% decline in the constant dollar construction program of the Corps of Engineers. In the current budget climate, no one expects the Corps ever to proceed at the pace of the past, but none of us wants to see the Corps become a caretaker agency either -- an agency unable to address any of the Nation's current flood control and urban water supply problems, or our dam safety needs, or the many other new authorities contained in this omnibus bill. This legislation is vital, necessary, and of some urgency.

I believe the compromises fashioned by sections 502 and 1006 are fiscally responsible, middle-ground positions which everyone should be able to live with. The issue of cost-sharing and user fees for inland navigation has been the most contentious issue precluding passage of an omnibus bill for the past 8 years, and it must be resolved in a fiscally responsible way. Let me assure you, therefore, any fiscally responsible alternative which the Finance Committee may recommend will receive my careful consideration and, in all likelihood, will receive my support.

Mr. Chairman, this bill must be brought to the Senate floor as soon as possible. The House companion measure, H.R. 3678, has received clearance from the Rules Committee and is expected to be brought to the floor without delay. The number of legislative days remaining in the 95th Congress is dwindling, and the conference may prove long and difficult. I hope that I can count on the members of the Finance Committee to work with me to secure a time agreement for floor consideration of S. 1739 -- and any Finance Committee reported amendments -- at the earliest practical time. Otherwise, our efforts will end in futility as Congress adjourns once again without enactment of an omnibus bill.

Title X Section 1006

With respect to Section 1006, Mr. Chairman, I will be brief. On May 10th on behalf of Senators Stafford, Moynihan, Bentsen and myself, I introduced a revised Title X dealing with port development. The essential differences in section 1006 are intended to clarify the intent of this section and provide the flexibility to ports to develop a viable fee schedule while protecting the interests of shippers and carriers. In particular, the amended Title X would preclude the imposition of port fees for the recovery of channel deepening costs from barges or vessels engaged in intraport traffic.

I want to emphasize two things, Mr. Chairman. First, Section 1006 merely allows non-Federal project sponsors to recover, through fees, their share of new construction costs. They need not do so. Second, this provision applies only to those ports where a new channel improvement would be put in place. Mr. Chairman, every port is different; no two are alike. In some cases the benefits of a deepening project will be widespread, involving transportation savings to all vessels using the channel; in others the transportation savings will accrue more narrowly. It is essential that ports and shippers have the flexibility to work out the best system openly in each individual case.

Mr. Chairman, I would like to have a copy of the amendment which I introduced last May 24 incorporated in the record following my statement.

Title V Section 502

Mr. Chairman, Section 502 of S. 1739 contains authority for the Secretary of the Army to charge user fees for the recovery of expenses on the inland navigation system of the United States in excess of the level of expenditures which occured in FY 1983 -- $646 million. As such, it is one piece in a compromise designed to limit the future budgetary impact of authorizing a billion dollars in new inland navigation projects, while giving the users and beneficiaries of the system a direct say in the application of Federal monies to the system.

Mr. Chairman, let me review the budget impact of the existing and potential future inland program. Current Corps budget projections forecast annual operation and maintenance expenditures for commercial inland navigation of $300 million or more rising to more than $450 million in FY 1994. Programed construction in this period will never fall below $100 million, and total commercial navigation expenditures currently programed for the FY 1985-89 period are $3.2 billion. As the Chairman knows, every nickel of this is discretionary spending. S. 1739, as reported, would authorize $1 billion in new authorizations, a figure which is likely to grow with floor amendments. The existing fuel tax revenues will only reach a cumulative total of approximately $400 million by FY 1988.

Faced with this large potential future outlay, the administration has proposed most recently to recover 70% of all inland system costs. Barge operators and shipping interests have not supported the recovery of any additional costs. Title V of S. 1739 walks a middle ground position, limiting the level of future Federal expenditures while giving to the system users and beneficiaries a clear voice in the decisions to be made, including whether and how much to charge in the way of user fees.

Mr. Chairman, I have been asked what the user fee charges under S. 1739 will be. The answer, Mr. Chairman, is up to the users and the Congress to determine. No user fees may be levied until expenditures exceed the cap of $646 million, and I believe no new user fees would be necessary until the next decade at the earliest, and then only if the users of the system through the Users Board supports the fees to fund an expanded Corps program.

Still, I favor the exclusion of trust fund receipts from the cap, but only as part of an overall package of changes which will assure a limit to the deficit impact of authorizing a billion dollars in new projects. In the current economic and budgetary climate, it would be highly irresponsible to authorize projects without limiting the future deficit impact of those projects. Furthermore, Mr. Chairman, I do not believe the President could sign into law legislation which authorizes a billion-plus-dollars worth of new inland projects without additional cost recovery.

We have attempted in S. 1739 to walk a fine line. We have attempted to limit the Federal exposure to future deficit increases while giving the users a strong voice in the system. If the provisions of S. 1739 can be improved upon in a fiscally responsible way -- by capping the amount of user fee revenue which may be collected, for example -- I am sure this Committee will find a way to do so, and I commend you for your efforts.

Senator ABDNOR. I would just like to make a few factual, points first, because Mr. Chairman did a good job covering the major parts of the bill that are of a great concern to you.

We are happy you have this bill. We hope you can help us out because we have been meeting with anyone and everyone who shows an interest in this bill, various groups, various individuals.

I would bet that my subcommittee is one of the few subcommittees in history that ever passed a bill and then went back after 2 years of holding hearings, a year and a half, and we held some further hearings in the event anyone had any new suggestions or new ideas to bring up. We have met after that. We have met with individuals and groups. And we have been trying to find a meeting of the minds.

And you are not going to find anyone that will entirely agree with another guy's opinion. So we have tried to come up with a proposal that is acceptable to the vast majority.

So far, we have been happy to refer this bill over to the Energy and Natural Resources Committee. They reviewed it. They have made some proposals. And now you have it. And yesterday or this morning the Appropriations Committee, the full committee, endorsed the idea and have stated that they will help us in bringing this bill to the floor.

It's a very necessary bill. First, you must recognize that we haven't had a bill in 8 years. And this country can't sit still any longer. We have been concerned about energy. We had better be getting concerned about water.

It represents many hearings, actually starting back 3½ years ago. And we have come up with a meeting of the minds that I think that we can get together on. And we hope that you can refine it, find some new approaches that we haven't thought of. We urge you to do so.

Let me say and the chairman covered it briefly, a few things about inland water ways. We put in this bill a cap of $646 million. That's what we are spending today on maintenance and construction on our inland waterways. That's the closest we can come to a figure that we are actually spending.

First, let me point out one thing. And I want everyone to recognize this, and why we have got to get on with this. What we are talking about in total dollars we are spending today is only about 30 percent of what we were spending in real dollars for water construction and maintenance back in 1968. And this is going to get worse. I need not tell you people here. You work on taxes and dollars and deficits. That's all you have been dealing with.

And I have told people that the package that we are offering today is going to be a lot better than the package they are going to see in another year or 2 years, when we are trying to whittle down a few hundred billion deficit and we are past the elections, so we don't have to worry about the next election coming up immediately. Tough, difficult decisions are going to be made. And this is all discretionary money in this bill.

We think we are being very fair. Let's talk about that inland water program of ours that we call for in this bill.

We have a cap of $646 million, exactly what we are spending this year. Now the chairman may have pointed this out, but there was an amendment that was offered in the committee to phase this out over 15 years and it failed by one vote. In our own committee. So you can bet your life that even where we are very concerned about water, there are those on the committee that think we are spending more than we should be.

But we hung onto this $646 million. And you should not have to have any additional users fee for the next 7 or 8 years because we figure today we are spending about $300 million at the most for the maintenance. The rest goes into construction. Within about 2 years, Tombigbee will be finished where a lot of the construction money has been going. That's going to be used in other areas.

And over that period of 6 or 7 years, we don't have anything on the board quite ready to go so it will take that long before we do. And this leaves it strictly up to the water users and the barge people, if and when they want it to phase in user fees.

We would have made it the full authority if we could have, but constitutionally we can't give that kind of authority to an advisory group. But I can't believe that they don't want users fees put on for additional programs. If they want to stretch the construction out over a longer period of years, they can do so. And that's a decision that those who use it will make, not Members of Congress.

Now if the Secretary or Assistant Secretary of the Army would try to go over the heads of the users it's still up to the Congress. We have a chance to stop it. And I cannot believe he could ever get away with it.

If you have got a better system for us, fine. We want to hear it. But I think, and I'm sure, that you have to come up with something as good as this if we are going to get it by the administration. Their proposal is a lot tougher than the one I am offering or will offer. But I think that they would buy this. I hope they will.

I'm not going to go into all the points. The chairman has covered that already. And all I want to say is that we think this amendment that we are offering is far better than what we had before because we have been listening to people. I want the members of this committee to know I met with Senators who had differences of opinion, and we couldn't even get together because each one feels very strongly on how we ought to assess the charges and raise revenues.

So we think that this merits your consideration. And we hope that you can improve the bill because we want you to do it. That's what it is all about.

But I would urge you that at least you come up with something that is equally fiscally responsible as we are presenting to you in our bill today. We would like to get action going on this bill. You will have it reported back, I think, at the end of the week. We hope you make it the kind of a bill that you, too, can support so we can get it to the floor and get it passed.

The House, I might tell you, is bringing up their bill within the next week and we would like to have something we could go to conference on. And I'm sure we can work out the first water bill that we have had in 8 years. And that is what is extremely imperative.

Once again, I want to say that the user fee charges that we have in S. 1739 will be up to the users and the Congress to determine. No users fee may be levied until expenditures exceed the cap of

$646 million. And I believe no user fees would be necessary until the next decade.

If they want to do it, it's up to them.

Gentlemen, again, I want to thank you for this opportunity. I appreciate the time you are going to put in on this, and we hope you can improve the bill. And we are looking forward to working with you.

Thank you.

Senator **Packwood**. Senator Abdnor, let me ask you this, if I might. In looking over the last 3 or 4 years of the history of the bill as it came from the Environment and Public Works Committee, first, you have—correct me if I am wrong—two issues. One is waterway user fees. The other is port user fees. And those are not necessarily the same thing.

Senator **Abdnor**. No.

Senator **Packwood**. Is the thrust of the bill as it comes from Senator Stafford's committee basically that both as to waterways and to ports we should be moving more and more toward pay your own way?

Senator **Abdnor**. For the expanded program over and above what we are doing today, yes.

Senator **Packwood**. In terms of a long-term philosophy we will move away from what we have done in the past, which was using general revenues, with few exceptions, appropriated for the purpose of waterway transporation, whether it's ports or otherwise.

Senator **Abdnor**. If we expand and spend at a greater amount than we are to date, that is true. Just like if we are going to spend for all of Government at a greater rate than we are, you are going to find some new taxes. And that's what we are trying to do here.

Senator **Packwood**. In terms of transportation, should we move toward that same philosophy of "pay your own way" on other forms of transportation?

Senator **Abdnor**. Yes, I think we do.

Senator **Packwood**. Including highways. And if they don't pay their own way, if you do not have enough traffic on them to pay for them in Oregon that would be about two-thirds of the State that would have no highways because they don't have enough traffic to justify the cost—should we move toward that philosophy?

Senator **Abdnor**. Well, let me answer you this way. You will have the money, like you do today, from a tax that you are paying into a common fund. I know what you are getting at. You are saying let's do the same thing with ports and waterways.

In a sense, we are in the inland waterways. If there are people going up and down the river, with the tax we have on fuel, they pay it. If they want to start additional construction and if they want to add extra tax to the fuel, then it will work the same way as it does today with highways.

I couldn't agree more.

Senator **Packwood**. Well, what I am saying is this—and I can say it for Oregon. My hunch is most of the members of this committee can say it for different States.

We started out in this country almost 200 years ago on the philosophy of tying this country together with a uniform transportation system. It started out with post roads, and then waterways and then railroads and then highways and then airports. And if we insisted that all cities that have airplane service today be able to pay their own way, another half of the cities in this country would lose their airplane service. And we have continued that philosophy in everything.

If we are now going to move to a philosophy that all ports must pay their own way, then I can tell you from Lewiston on down on the Columbia River—Lewiston probably all the way to Portland and past—those ports will wither and disappear. They cannot pay their own way. And if we are going to abandon the philosophy of a unified river transportation network in this country, then we might as well say that the only ports that are going to exist are going to be those of extraordinary draft and that are relatively close to the ocean or actually on the ocean. And I don't think that is what any of us want to do. And I don't think that was our original intention.

Senator ABDNOR. It's not our intention, sir, to put anyone or any port out of business. The amendment that the chairman referred to a few moments ago raises the sum of money we are putting in for a fiscal year for the purpose of operating and maintaining the harbors of the United States.

We are talking about $420 million a year. And that's the closest dollar we can come to as to what we are actually paying. That's why we went from $370 to $420 because that is a more accurate accounting, more accurate figure.

Now we are not telling anyone—if they want a deepwater port—this is another concern of ours, Mr. Chairman—that in the past we were in a position that we could do things for everyone. If anyone wanted a deepwater port, we would put a deepwater port. But we can't do that anymore. And we have found out we do not need deepwater ports all over this United States. That two or three will suffice. That is all that is actually needed. We have studied this very carefully.

Senator SYMMS. How about from a security standpoint?

Senator ABDNOR. I think most of our security is covered today; our Navy is floating around in the ports we have, and we don't have any deepwater ports. So we are getting by, unless you are going to build huge warships, if that is what we are talking about.

As a matter of fact, we are finding out that maybe many ports won't be interested in deepwater ports. There is a topping off feature, which has a lot of merit and a lot of them are looking at that. Maybe deepwater ports won't even be necessary. Topping off might be superior, and cost less money to do.

Senator STAFFORD. What we propose to do here, Mr. Chairman, is really look at the way we finance deepening some of the ports that now probably have a maximum of about 38 feet, if they want to go beyond that to 45 and 50 feet. We would then propose that there be a participation on the users in the construction that is necessary to achieve a deeper channel.

But even here the Federal Government is proposing, and our bill, a 90-percent loan guarantee for the cost of doing so. I would say, most respectfully, that as to the highways of the Nation, they virtually are completely supported today by user fees in the form of the various fuel taxes, and they are one of the few operations of the Federal Government that does today live within the size of its trust fund, and generally within the revenues that come into it from the various fees that are charged on fuel and the trucking industry, and some others, as the chairman of the Finance Committee is well aware.

Senator PACKWOOD. All I'm saying, Bob, is that I sense that we are moving toward a different philosophy on ports from what we exercise on railroads, airports, highways. And that philosophy is the port must pay its own way. Now that's different from having some kind of generic source of funds which, even if they are user fees, are then distributed among different ports whether or not they pay their own way.

And if we are going to move toward that—I don't agree with it—but if we are going to move toward that, we ought to understand what we are doing. And if we are going to move toward the philosophy that we only need really two or three deep draft ports in this country—one, I guess, can be New York, and one can be Oakland or Long Beach, and pick a third one on the Gulf some place—and that is all we are going to have, let's debate that. Let's understand that. Let's understand the consequences. But let's not move into it backwards.

Steve.

Senator ABDNOR. Could I just add one thing, sir?

Senator PACKWOOD. Yes, Senator.

Senator ABDNOR. On railroads, I represent a good State to look at. We lost every bit of our Milwaukee railroad. My State took it over, and we now have a railroad functioning in there. And we did find the solution. You are asking about security. There isn't a military craft today that can't use our ports. If they did, it becomes Federal responsibility under our bill.

Senator SYMMS. Well, my question really was "if you get everybody standing in one group, one grenade can get them all" type of question. And if you just have three ports, you have only got three targets that you have to close in terms of an international crisis, terrorists, or something like that.

If you have 15 or 20 ports, at least they would have to close 15 or 20 harbors or 30 or 40.

Senator ABDNOR. The day comes when you have to have deep harbor ports for that situation, which we do not need today, then it's a Federal responsibility.

Senator SYMMS. Thank you, Mr. Chairman.

And I appreciate both of you being here. And I appreciate the chance to ask questions. But are these fees, as you envision them, to be collected through a fuel tax, through tolls, through a ton-mile approach? And also would they be imposed on a uniform wide system, along with what Senator Packwood was talking about? Or would that be on a segmented system?

Senator ABDNOR. We are talking about two different things. Now on the ports you may not even have that.

Senator SYMMS. I'm talking about the inland water fees.

Senator ABDNOR. Inland, that could be with, No. 1, the Finance Committee's determinations, or if you like our way of doing it, you leave it up to the advisory board which would make recommendations to the Secretary. If the advisory board didn't approve of what the Secretary wanted done, I have got to believe that this Congress would respond to their wishes in one heck of a hurry.

Senator SYMMS. But I think what my concern is that as you go further up the system, and it just happens that Lewiston, ID, is the furtherest port up the Columbia system, and each one of those feeds into the following port, and finally them come out at Portland—if you try to charge them on a segmented basis, there may be a breaking point where there has been a lot of private capital invested in wood chip facilities, in lumber, loading facilities, in grain elevators and so forth to haul the grain out of there, it would all of a sudden find itself in an uneconomic condition. And then we would have a big capital investment there both from the Corps of Engineers' side of it and the private citizen side of it. That's a concern, I think, that as Senator Packwood said, we have got to resolve that here in the Congress before we get too far out ahead. Just where are we leading to for the people that are further up the river? And how does that effect the Nation as a whole? That's my question.

Senator STAFFORD. I think our subcommittee chairman will agree with me that there are no user fees, as we have said, unless the cap that is proposed in this legislation is exceeded. It's some $646 million. If that is exceeded, on the recommendation of the board that is established, I would just point out to the committee that that board is made up of users of the inland waterway system. So they ought to be particularly sensitive as to whether, one, they want to spend more money than the cap since they are the people who are going to have to pay it, and they are the people to get the benefit; and, two, they are going to be in a position, as I said in my opening statement, to supervise the expenditure of these funds to see that they aren't wasted. And so they have a particularly sensitive interest in both the question of should we spend more money, and if we do spend it, how it is spent.

It may be, as Senator Abdnor said, this committee can come up with a better mechanism than we have for handling this part of this controversial legislation.

But I would like finally to say that Senator Abdnor has worked diligently, unusually hard, for 3½ years to put this together. It has been 8 years since we have had a waterway bill. And we ask your cooperation in examining what we have done. We invite your improvements, if you can come up with them. And we appreciate the chance to appear in front of you.

Senator SYMMS. I thank both Senators very much.

Senator ABDNOR. One last thing on this subject. We welcome any suggestions or proposals you have. We would be happy, I am sure, accept them. But the bottom line is that we cannot go on increasing the deficit. Certainly the Senator from Kansas has been talking about this and working on this for a long time. And I still would say, and I think we all ought to be honest with ourselves, that it isn't going to get any better in 1985. If we want water projects, and we haven't passed a bill in 8 years—but if we really want to get on with building water projects in 1985 I think we have got to look for some help from other areas rather than just the Federal Government.

So we want this bill to get moving. That's the main thing. We have got a better chance to pass a bill this year than we do next year. And with your help and working together, we can get this thing on the floor and get it to conference and get it passed in this session of Congress.

Senator SYMMS. Thank you, Mr. Chairman.

Thank you, gentlemen.

Senator ABDNOR. Thank you.

Senator STAFFORD. We say the yellow light on that thought that indicated caution on our part. [Laughter]

Senator PACKWOOD. The green means go, red means stop and yellow means hurry up.

Senator DANFORTH. Let me tell you my analysis of the situation, and then correct me if I am wrong.

The barge industry right now in the United States—the inland waterway system—is in a state of depression. I heard a week ago today of a major barge company in St. Louis that had been around for generations, owed by the same family. It is now going out of business. And I think that is typical of the barge industry in the United States. It is in a state of depression.

In part, the problem of the barge industry is created by the policies of the Federal Government. That is to say that the barge industry to a very great extent services American agriculture. It transports fertilizer upriver. It transports grain downriver. And as American agriculture goes, so goes the barge industry.

Our Government has, over a period of a few years now, imposed grain embargoes, which have had the effect of interrupting exports of American grain. Also we have put in place the PIK Program costing something like $10 million, I believe, last year. And the theory of the PIK Program is that the Government is going to pay farmers not to produce.

In other words, the Government is going to pay farmers not to do things that allow the barge industry to make money. That is Government policy.

At the same time that we have been imposing grain embargoes, putting in place the PIK Program and generally thwarting the ability of the barge industry to make a dollar, we have imposed a user fee on the barge industry for the first time in the history of the country. And it has happened at the same time that we have interrupted the normal course of American agriculture.

We have, through the imposition of the user fee, created a trust fund—and I am told that the trust fund has in it now $110 million, not a penny of which has been spent for the inland waterway system.

Senator PACKWOOD. And I might say that's peanuts in comparison to what is in the aviation trust fund, which has mounted up and mounted up and not spent, and is now approaching several billions in surplus.

Senator DANFORTH. So I think the position the Government is taking is that we want a kind of a market system, more or less, we want the users to pay for what they're getting, but we are not going to spend what we are charging them, and we are going to pursue artificial policies so the Government can make it impossible for the industry to survive.

I think, Mr. Chairman, what we should be considering is a two-pronged approach. First of all, it seems to me that the very last thing that we want to do at this point is to have any increase in the user fee. And I think we should consider freezing the user fees at the present level, which is 8 cents rather than increasing them to 10 cents.

I don't understand why we should permit an increase in the user fee to 10 cents, which is not part of this bill—that's the existing law—if we are not spending the money in the first place, and if we have an industry in depression in the second place.

Second, it seems to me that if we are going to extract more blood out of this turnip, the least we can do is to try to provide a little health for the turnip. And one thing I would suggest is that we at least make some move toward reversing the present policy of paying farmers not to produce.

I was in Africa for 2 weeks in January. There are people starving to death over there. And yet we have had a Public Law 480 program which has been limping along at very low levels, and it would seem to me that any kind of increase, even the 2-cent increase, in the user fee for the barge industry should be accompanied by a very significant liberalization of Public Law 480.

And if I'm wrong in that analysis, I would like to be enlightened by the witnesses.

Senator ABDNOR. I have to agree with much of what you said. I can say to the Senator from Missouri that the barge people are depressed, just like the farmers. I might say this: That we found out that part of the problem is that we have got an awfully lot of barges running around now because of a leaseback provision and a few things that we have set up in the Government now. That made it more appealing to go into the business and buy new barges.

But that's not the point. The thing I want to point out to you is that we have said several times here in our testimony that it is going to be 7, 8, or more years before we have to add any new user fees. And, hopefully, we are going to get this economy straightened out by that time. Everyone is in trouble if we don't. I don't know what else we could do for the barge people if things haven't picked up during that period of time.

We say again that it should not be necessary to put any additional users fee on for the next 7 or 8 years. And so I think we have got to keep that in mind.

And the other thing you have got to remember is that we have the administration to face here. You recall that they wanted 70 percent recovery. We think we have got them talked down to what we are proposing. But we think this is the very minimum they would accept.

So if we want to go on with our waterways, if we want to add those extra locks and start improving our waterways transportation system, we have got to come up with a proposal, and it has got to be this year.

Senator STAFFORD. Could I just add to that, Senator Danforth, that it is well to bear in mind that, as I indicated a minute ago, the board which this legislation proposes made up of the shippers and users of the inland waterway system is the board that decides whether or not they want to spend more than the cap that the legislation proposes, which is roughly what we are spending right now.

So they make the decision. Do they want to charge themselves more for the facilities that they are operating their barges in and ships in or do they want to stay within the cap? They make that decision, which probably means they would want to freeze things unless the industry shows a significant improvement.

Senator **Danforth**. What would you think about freezing the present user fee at 8 cents?

Senator **Stafford**. I would rather stay with the legislation that Senator Abdnor and his subcommittee have produced and our full committee has voted out, especially since—again, I say I think the people who use the facilities are the ones who will make the decisions as far as the waterways are concerned, whether any user fees are necessary beyond the 8 cent current charge.

Senator **Danforth**. It would go up to 10 cents automatically.

Senator **Abdnor**. I think, Senator, it would be well to realize that the tax you are speaking of, the existing fuel tax revenue, will only reach a cumulative total of about $400 million by fiscal 1988. That's from the time it started, we are only going to raise $400 million off of this. And our bill calls for $647 to be spent each year.

And so I personally don't think it would be that much of a factor. It may slow down the amount of dollars we have for construction by a little bit, but I don't think it would throw everything off base at all.

Senator **Packwood**. John.

Senator **Heinz**. Mr. Chairman, thank you. Mr. Chairman, I have one or two questions for our distinguished authors, but I want to make a brief comment about this legislation, and in particular that part of it, section 502, which gives the Secretary of the Army the authority to impose what for all intents and purposes are taxes. We may call them fees if they want, but they are fees on commercial users of the waterways.

I oppose that provision. I oppose it very strongly. Not only for Jack Danforth's reasons, but for three additional reasons.

It is, however, it seems to me, pouring water on a drowning man when you impose additional taxes beyond the current 8 and soon to be 10 cents on this industry, which in 1982 lost $30 million—$894 million worth of sales—and that is just for the 15 largest and presumably most efficient barge companies. And I know of one barge company which in 1983 had the dubious distinction of losing $24 million all by itself.

The situation is so bad that the Drovoe Corp., which has for many years had a facility on Neval Island in Alleghany County, my home county, where they used to build as many as one barge per week, has, in fact, closed their entire facility. And it is up in the air as to whether this facility, which provided uncounted numbers of barges during World War II, will ever reopen again.

So, No. 1 is that we are pouring water on a drowning industry. No. 2, the industries, served by the barge and waterway industry include not only feed grains, but coal. Both of those industries are suffering from a variety of competitive factors, among them policies imposed by Government that were counterproductive, but not the least of which, are international competitive pressures that are making it very tough for farmers to make a buck, and have resulted, of course, in many tens of thousands of my coal miners being out of work because we can't afford to export the coal, the dollar being so strong.

A third reason that I strongly oppose this legislation is that at least in this Senator's judgment it represents an unconstitutional delegation of the authority to tax, which is reserved by the Constitution to the Congress, to the executive branch.

Now you may have gathered by now that I'm not undecided on section 502. But let's assume for the moment, even if one agrees with the notion of taxing an industry which is losing money, and worse, increasing the taxes on an industry that is losing money, and if one doesn't want to worry about the unconstitutional delegation of authority to the Secretary of the Army, I would suggest that the proposal in the legislation whereby anything over some $600 or $700 million a year is to be ponied up by the waterway users industry is premised on a deeply flawed assumption.

The assumption, as I understand it, is that anything over and above that base amount should be borne 100 percent by the barge industry because they get 100 percent of the benefit from those increases in expenditures.

Now I don't know how it is in Vermont; I don't know how it is South Dakota or North Dakota. Indeed, I don't know how it is in the Dakotas at all. [Laughter.]

Except for the Garrison diversion project. [Laughter.]

If we were talking about fiscal responsibilities, that would really be hitting below the belt. But that's for another day.

On the Ohio River system, which includes the Alleghany and the Monongahela, in addition to transportation benefits, there are very considerable water supply benefits for municipalities. Indeed, if we didn't have the pools on the Ohio-Alleghany-Monongahela, we could not draw the water into our municipal water systems that we do today. There are considerable benefits for flood control, which benefits obviously many hundreds of thousands of people, and there are many other economic benefits which flow to all the people who have very extensive marinas who service the boating industry, the water ski industry, the recreation industry, even if none of those craft happen to transit the locks that are part of the dam structure.

And my question to either of you is this: What is the philosophy behind attributing all these benefits from these improvements to one particular class of beneficiaries when, as I believe, there are many other classes of beneficiaries, and what assurances do we have that the Secretary of the Army understands that he should not put 100 percent of the cost on a group of beneficiaries who clearly do not receive 100 percent of the benefits?

Senator **Abdnor**. If I could respond to that. Possibly you misunderstand this, Senator.

Senator **Heinz**. It's possible.

Senator **Abdnor**. This is only for direct benefits. None of the $646 million or the tax dollars above it would go for water supply or anything else. This is just for your locks, for your dredging, where it is necessary, and that sort of thing. Not for recreation. It is for nothing else.

And you have got to realize that this $646 million far exceeds any kind of a tax that is going now, as I pointed out a minute ago. The tax that this committee helped put on—the fuel tax on the vessels will only cover $400 million by 1988. I mean it raises really very few dollars in relation to the total overall cost. And every dollar that comes in goes for this purpose.

Now, I'm like you. I agree with you. I am sorry we had to settle for the Secretary of the Army. We tried—I would have loved to have had the 21-member users committee be more than an advisory board. We had to leave them in an advisory board position because that is constitutional. That's all we could do. Maybe you would feel more comfortable. I have no quarrel with you. If you can come up with a better kind of an approach, I'm all for it.

But possibly the Secretary would have to report his suggestions to your committee for approval before it goes into effect. But I contend that this 21-member board speaking for all the users and the barge people and the coal people, if the Secretary gets out of line and doesn't follow their recommendation, they are going to hit this Hill and the Secretary's proposal isn't going to go anywhere.

But if you would feel more comfortable by saying that the Secretary should listen to the advisory board, then propose the tax, send it over to this committee, fine.

Senator HEINZ. Let me say I would feel a lot more comfortable to say the least if that was the way. And does that mean you would favor that, Jim?

Senator ABDNOR. I would, yes.

Senator HEINZ. Would you favor that, Bob?

Senator STAFFORD. I'm not prepared to abandon in anyway what is contained in the bill, which has been prepared. But as Senator Abdnor has said, if this committee, which specializes in raising revenues, can improve on the revenue procedures that are contained in the bill, we certainly would applaud that and look forward, in the event that could be done, to cooperating with this committee and bringing the matter to the floor.

I would say, once again, at the risk of repetition, that, as Senator Abdnor says, the first $646 million to be spent each year does come from the general revenues of the country. It doesn't come from the shipping interests that use the facilities. It certainly would account for any other interest that may get some benefit from the use of the waterways, including cities, towns using the water and even yatchmen's that man propel their crafts upon it.

It's only in excess above that that might cause a user fee, and there it would be decided by the very people, the barge owners principally, who are using the waterways, whether or not they wish to impose an additional cost upon themselves.

Finally, something does have to be done because we are spending 23 percent as much, in terms of real dollars each year as we were 20 years ago on our water resources system. It is deteriorating. Something really does need to be done.

Finally, our bill, we think, after 3½ years, is well worked out. Even to the waterway interests it should seem quite reasonable, when you consider the administration is proposing an immediate 70-percent contribution to the cost of operating the system on the part of the users.

Senator HEINZ. Mr. Chairman, I would like to make one concluding comment of about one and a half sentences, which is this: One of the reasons I opposed the original tax was, I was afraid that exactly what has happened was going to happen; namely, a balance would accumulate in the trust fund and it would never be spent. And that, indeed, has happened. One hundred and ten billion dollars has accumulated. And right now the industry is losing a lot of money.

So what I would propose to the committee is, to suspend any taxes, the 8 cent specifically, we suspend the taxes on the waterway industry until such time as either they are making money again or we have spent the $110 million. And then there will be a rationale for having some kind of a waterway user fee.

Right now, it's a nonuser fee because we don't use it.

Thank you.

Senator PACKWOOD. I might say to my good friend from Pennsylvania that I tried that approach on the airway taxes last session. We had a recession provision in there that if they didn't spend the money in the fund, the taxes went back down. The administration fought that tooth and nail. They were opposed to it. They promised us they would spend it. And it is mounting up and mounting up and mounting up to several billion dollars.

Of course, you know what their theory is. Any money we don't spend goes to reduce the deficit. It doesn't matter that you would not have had these taxes but for the promise to the users that it would be spent. Short of that, you never would have had the coalition to pass the taxes to begin with. I think it's a breach of faith.

Russell?

Senator LONG. Mr. Chairman, I will thank Senator Dole for yielding so I could make a brief statement. First let me ask that the statement of Senator Baucus, who is necessarily absent today appear in the record.

Senator PACKWOOD. Without objection.

Senator LONG. It spells out what already has been said here by the members of the committee.

I'm going to have to rush off to make a speech that I promised to make several months ago, but I would like to assure my friends in the waterway industry that if they are still testifying when I get back, I will be glad to support their position as I understand it. I am generally against increasing fees on them, against more taxes, and for more benefits. I hope that they can go along with that program. [Laughter.]

I'm not going to offer an amendment in this committee other than a revenue amendment. But I do want to ask the withesses if they are aware that under the rules, revenue measures generally fall within the jurisdiction of this committee. I find nothing in here that says that the Committee on Environment and Public Works has jurisdiction over revenue measures, be that a matter to raise revenue by way of calling it a fee or a tax or something else.

Can we agree that this committee does have jurisdiction over revenue measures?

Senator STAFFORD. Well, I would say to the distinguished Senator that we have not contested the referral of this legislation to this committee. And as we have both said several times, if this committee can come up with a better mousetrap, we are ready to recognize it, as far as the revenue measures are concerned.

Senator **Long**. Well, I thank you, Senator. And I just want to assure the Senators that I am not planning to offer any amendment in this committee. I might want to talk to you on the floor about that. But in this committee, I will limit myself to revenue measures.

Senator **Stafford**. I would say, Senator, after your speech I would be glad to visit with you on the floor. [Laughter.]

Senator **Packwood**. Thank you, Russell.

Bob?

Senator **Dole**. I don't want to take the time of these witnesses. There are several other witnesses, I see, that would like to testify, but I think we certainly appreciate the efforts of the chairman and the subcommittee chairman. And we do appreciate your willingness to let us take a look at the areas that were just outlined by Senator Long.

And there are only two issues before this committee. That's 502 of title 5 and 1006 of title 10. That's all we are addressing. We may have all kinds of different views on what the bill may contain elsewhere, but those are the two areas that we should address. And I assume witnesses will limit their remarks to those two areas.

And the question of who is going to do the taxing. Whether you are going to delegate it to the Secretary of the Army or some port authority official or whether it is going to be retained by Congress and whether or not we are going to specify, if, in fact, there is a tax, how it should be expended.

So we may get into that with other witnesses, but we appreciate your being here.

I think you agree those are the only two issues.

Senator **Stafford**. Yes; we do.

Senator **Abdnor**. Yes.

Senator **Dole**. And I assume if we struck those two issues—would that do violence to the bill?

Senator **Abdnor**. As long as you don't want water programs built any faster than we are building them today. I mean we just don't think we can find the dollars and go build. I don't like users fee, Mr. Chairman. My farmers are very unhappy.

Senator **Dole**. I'm just suggesting that we maybe either strike or modify.

Senator **Abdnor**. Whatever you come up with. That is your prerogative.

Senator **Dole**. And I know Senator Packwood has one idea. And I'm certainly aware of the plight of most of the people in the barge business. At least I have heard the same stories that were related by Senator Danforth. In fact, I understand there was a letter circulating which showed that a man who appeared before this committee a couple years ago saying that if these fees are imposed it is going to cause havoc and he is now out of business. He said he was right.

Senator **Abdnor**. But, Mr. Chairman, you caught this afternoon that there shouldn't be any new fees having to be levied in at least 6 and probably 8 years unless they want to take off on everything all at one time. There is money here.

Senator **Dole**. I understand the cap. We will try to complete our work as of Friday.

Senator **Packwood**. Hopefully, a markup Thursday or Friday morning.

Senator **Dole**. It might be well to ask the chairman while he is here, if we don't complete that, is there any disposition to give us a few more days?

Senator **Stafford**. I think our committee would want to be reasonable, if you need a few extra days in view of all of the problems we are all facing.

Senator **Packwood**. All we are up against is the tax conference with the House, which will be going Wednesday, Thursday, Friday.

Senator **Stafford**. We want to have that settled by the weekend. [Laughter.]

Senator **Dole**. Thank you.

Senator **Stafford**. Thank you.

Senator **Abdnor**. Thank you. I just want Senator Heinz to know that when I said yes I was speaking for myself and not my committee.

Senator **Heinz**. Apparently.

Senator **Packwood**. Thank you very much.

Next we will hear from Robert K. Dawson, the Acting Assistant Secretary of the Army for Civil Works.

STATEMENT OF ROBERT K. DAWSON, ACTING ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, DEPARTMENT OF THE ARMY, WASHINGTON, DC

Senator **Packwood**. Go right ahead, Mr. Secretary.

Secretary **Dawson**. Thank you very much, Mr. Chairman.

I'm Bob Dawson, Acting Assistant Secretary of the Army for Civil Works. I have with me Dr. G. Edward Dickey, my Deputy for Program Planning, Review and Evaluation.

I'm very pleased to have the opportunity to appear before this committee to present testimony on the two sections, section 502 and section 1006.

Section 502 would authorize the Secretary of the Army to impose, collect, and obligate use charges on the commercial users of the inland waterways and harbors of the United States. These charges would be for construction, rehabilitation, renovation, operation and maintenance of commercial navigational features. The receipts from these charges would be in addition to a ceiling of $646 million in obligations from general revenues and the current fuel tax imposed by section 501 of S. 1739.

The administration supports section 502 of S. 1739, and the complementary authorities and institutions created in title V. However, we have a number of modifications which we believe are necessary to make title V a more feasible way to provide for the needs of our inland waterway users for the foreseeable future.

First, Mr. Chairman, we believe that the obligation ceiling of $646 million is not a reasonable long-term ceiling in light of the projected demands for Federal budgetary funds in this period of continuing fiscal austerity. Accordingly, we believe that the obligation ceiling should be reduced by $35 million annually in the interest of accelerating the shifting of financial responsibility for maintenance and modernization of our inland waterways from the general taxpayers to the users of that system.

Senator PACKWOOD. Reduce it $35 million until it reaches zero?

Secretary DAWSON. Excuse me, sir?

Senator PACKWOOD. Thirty-five million a year until it reaches zero?

Secretary DAWSON. That would be the——

Senator PACKWOOD. Is that what you are recommending?

Secretary DAWSON. Yes, sir.

Over an extended period of time, a gradual reduction in the obligations to be made from general revenues would, of course, increase the significance of the amount and structure of use fees charged by the Secretary. For this reason, it's important that section 502 be carefully structured to ensure the feasibility and fairness of any charges imposed under that authority. One key feature of section 502 that has already been discussed is the users board authorized by section 503(b). This users board would advise the Secretary as to the level of funds to be obligated for the inland waterways and harbors of the United States.

We also believe that any law providing for the imposition and collection of inland user fees should very explicitly define the procedural and substantive steps under which those fees are established and modified over time. The important principle of cost recovery from beneficaries should not be made unworkable by endless litigation and unlimited judicial review. Also to this end we would propose delaying any user fee collection authority to fiscal year 1987 to allow for their orderly development and implementation.

Any user fees collected under the authority of title V of S. 1739 should be deposited in the existing inland waterways trust fund and should be made available for obligation by the Secretary of the Army, as provided by appropriations acts. Moreover, these funds should be made available for the funding of operation and maintenance, rehabilitation, and renovation of the inland waterways and harbors, as well as construction of new works on the inland waterways.

Finally, Mr. Chairman, the definition of costs which would constitute obligations for the commercial features and components of the inland waterways and harbors should be more completely and explicitly defined than is now the case in S. 1739. If there is no explicit detailed definition of the costs of the system, we can expect continued litigation and bureaucratic haggling over the amount of costs to be legitimately assigned to the inland waterway users. In this connection, the administration proposal, in connection with its own bill, S. 1554 sent to the 98th Congress during the first session, contained specific definitions of the waterway system which would eliminate the uncertainties and ambiguities which are present in S. 1739 as drafted.

In summarizing my comments, Mr. Chairman, on section 502 of S. 1739, I wish to reiterate the administration's support for this title as it would be modified to make it more implementable and to accelerate the rate at which the projected obligations for the inland waterway system is shifted from the taxpayers to the direct beneficiaries of that system.

Before concluding my prepared statement, Mr. Chairman, I would like to just touch quickly on section 1006. This section would authorize non-Federal interests to recover obligations for costs of deep-draft navigation projects. It would also require that any fees collected to recover the costs of any harbor maintenance or improvement would be established so that no less than 80 percent of the fees would be assessed on users that benefit directly.

I might note that Senators Abdnor and Stafford, joined, I think, by Senators Moynihan and Bentsen, have introduced a bill to do away with that 80 percent restriction.

While we strongly support extending to non-Federal interests the authority to recover their costs from navigation users, we believe that it is inappropriate to arbitrarily limit structuring and incidence of those fees between navigation beneficiaries and nonbeneficiaries for a particular improvement. Non-Federal interests should have full flexibility with regard to the means by which they recover costs.

In closing, Mr. Chairman, as a personal note, let me urge the Committee to support early resolution of cost recovery and user charge issues relating to the Nation's inland waterways and ports. A new consensus regarding the proper division of financial responsibility for these projects between the beneficiaries and the general taxpayer is essential to permit orderly planning and implementation of future improvements. By any reasonable indication, the costs of these projects exceeds the available Federal resources now and in the foreseeable future. Consequently, new sources of funding must be found if we are to give the commercial waterway users a fully modern and efficient system which responds to their growing demand.

Mr. Chairman, we deeply appreciate being here today, and would be pleased to answer any questions you may have.

[The prepared written statement of Secretary Dawson follows:]

TESTIMONY

ROBERT K. DAWSON

ACTING ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I am pleased to have the opportunity to appear before this Committee in my capacity as Acting Assistant Secretary of the Army for Civil Works to present testimony on Section 502 and Section 1006 of S. 1739.

Section 502 would authorize the Secretary of the Army to impose, collect, and obligate use charges on the commercial users of the inland waterways and harbors of the United States. These charges would be for construction, rehabilitation, renovation, operation and maintenance of commercial navigational features and components of the inland waterways and harbors of the United States sufficient to meet the needs of commercial waterway users as recommended by the Inland Waterway Users Board established by Section 503 of S. 1739. The receipts from these charges would be in addition to a ceiling of $646 million in obligations from general revenues imposed by Section 501 of S. 1739.

The Administration supports Section 502 of S. 1739 and the complementary authorities and institutions created in Title V; however, we have a number of modifications which we believe are necessary to make Title V a feasible way to provide for the needs of our inland waterway users for the foreseeable future. First, we believe that the obligation ceiling of $646 million is not a reasonable long-term ceiling in light of the projected demands for Federal budgetary funds in this period of continuing fiscal austerity. Accordingly, we believe that the obligation ceiling should be reduced by $35 million annually in the interest of accelerating the shifting of financial responsibility for maintenance and modernization of our inland waterways from the general taxpayer to the users of that system.

A gradual reduction in the obligations to be made from general revenues would, of course, increase the significance of the amount and structure of use fees charged by the Secretary over time. For this reason, it is important that Section 502 be carefully structured to ensure the feasibility and fairness of any charges imposed under that authority. One key feature of Section 502 is the Users Board authorized by Section 503(b). This Users Board would advise the Secretary as to the level of funds to be obligated for the inland waterways and harbors of the United States.

We support the Users Board concept as an important adjunct to the establishment of inland waterway user fees; however, we believe that it should be clearly established that this Board is purely advisory in nature and that the Secretary of the Army retains full authority to set the form and amount of user fees for the inland waterways.

We also believe that any law providing for the imposition and collection of inland user fees should very explicitly define the procedural and substantive steps under which those fees are established and modified over time. The important principle of cost recovery from beneficiaries should not be made unworkable by endless litigation and unlimited judicial review. Also, to this end we would propose delaying any user fee collection authority to Fiscal Year 1987 to allow for orderly development and implementation.

Any user fees collected under the authority of Title V of S. 1739 should be deposited in the existing Inland Waterways Trust Fund and should be made available for obligation by the Secretary of the Army as provided by Appropriations Acts. Moreover, these funds should be made available for the funding of operation and maintenance, rehabilitation and renovation of the inland waterways and harbors as well as construction of new works on the inland waterways.

Finally, the definition of costs which would constitute obligations for the commercial features and components of the inland waterways and harbors should be more completely and explicitly defined than is now the case in S. 1739. If there is no explicit detailed definition of the costs of the system, we can expect continuing litigation and bureaucratic haggling over the amount of costs to be legitimately assigned to the inland waterway users. In this connection, the Administration proposes as it did earlier in connection with its own bill, S. 1554, sent to the 98th Congress during its first session, specific definitions of the waterway system which would eliminate the uncertainties and ambiguities which are present in S. 1739 as drafted.

In summarizing my comments, Mr. Chairman, on Section 502 of S. 1739, I wish to reiterate the Administration's support for this Title as it would be modified to make it more implementable and to accelerate the rate at which the projected obligations for the inland waterway system is shifted from the taxpayers to the direct beneficiaries of that system.

Before concluding my prepared statement, Mr. Chairman, I would like to briefly address Section 1006 of S. 1739. This section would authorize non-Federal interests to recover obligations for costs of deep draft navigation projects by the imposition and collection of fees for the use of such projects by vessels in commercial waterway transportation. Moreover, Section 1006 would require that any fees collected to recover the costs of any harbor maintenance or improvement undertaken pursuant to S. 1739 would be established so that no less than 80 percent of the fees would be assessed on users that benefit directly. While we strongly support extending to non-Federal interests the authority to recover their costs from navigation users, we believe that it is inappropriate to arbitrarily limit the structuring and incidence of those fees between navigation beneficiaries and nonbeneficiaries for a particular improvement. Non-Federal interests should have full flexibility with regard to the means by which they recover costs of commercial navigation from commercial waterway users.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or the Committee may have.

Senator PACKWOOD. Mr. Secretary, are you an engineer?

Secretary DAWSON. Excuse me, sir?

Senator PACKWOOD. Are you an engineer?

Secretary DAWSON. No, sir; I'm an attorney.

Senator PACKWOOD. What promise do we have from this or any future administration that if these user fees go up they would be spent? You are not spending them now.

Secretary DAWSON. No, sir; because we don't have the authority to until an omnibus bill, such as the one that is pending, is passed.

Senator PACKWOOD. You have got authority under the Airway Development Act to spend them and you are not spending them.

Secretary DAWSON. I think that's correct, sir, but I'm not familiar with that program. I can say that it would certainly be our intent to spend those dollars. We are very much aware of the tremendous needs, as you are, sir.

Senator PACKWOOD. Let's separate for a moment the waterway user fees from the port user fees. You were suggesting that as far as waterway user fees are concerned, finally at bottom, when you are all done, the users ought to pay the total way.

Secretary DAWSON. Yes, sir.

Senator PACKWOOD. And that means the farther up river you go in whatever dredging you may have to do, 200, 300, 400, 500 miles, that will be done by the users in that area apparently.

Secretary DAWSON. No, sir; we are looking instead at a systemwide program that I think would be responsive to that very concern, which is a very legitimate concern.

Senator PACKWOOD. How?

Secretary DAWSON. Well, sir, each segment would not be expected to pay its own operation and maintenance.

Senator PACKWOOD. So you are going to have basically a river basin wide for each river basin. Some kind of allocation?

Secretary DAWSON. No, sir; it's systemwide.

Senator PACKWOOD. Nationwide. Is that what you mean by systemwide?

Secretary DAWSON. Yes, sir.

Senator PACKWOOD. And you are telling me that you are going to have user fees of a high enough level that you will be able to maintain roughly—just maintain without expanding—the present nationwide inland transportation system we have, and you would be willing to put user fees high enough to maintain that?

Secretary DAWSON. Well, that would certainly be the intent and objective. Yes, sir.

Senator PACKWOOD. Let's take coal or wheat or any bulk cargo. You put those user fees high enough, and your only competition is rail, and when the user fees go way, way, way up for barges, what is going to be the natural consequence on rail rates?

Secretary DAWSON. If I may, Mr. Chairman, let me defer to Dr. Dickey. I think he has looked into that in more detail.

Dr. DICKEY. There is no question, Mr. Chairman, that we might expect as barge rates rose for rail rates in places where they are competitive with barge rates to also rise.

Senator PACKWOOD. It's more than might expect, isn't it? Can you think of a situation where it hasn't happened?

Dr. DICKEY. No, sir.

Senator PACKWOOD. Suddenly the barge fees go up by twice, and the cost of shipping by barge goes up 10, or 20, or 30 percent and you are the rail company, the only other form of transportation. So you raise your rates by 7, or 8, or 9 percent, if the barges go up 10 percent, or 19 percent if they go up 22 percent. You stay under them. You can undercut them, and yet from the standpoint of the farmer who is trying to ship wheat or any other farmer who is trying to ship some kind of produce, they are going to be stuck with higher and higher fees, even though those may not be cost-related fees any longer as far as the railroad is concerned. They are competitively related but not cost related.

Dr. DICKEY. I quite agree.

Senator PACKWOOD. Is that what you want?

Dr. DICKEY. Well, the situation that exists now, Mr. Chairman, is that we have one mode of transportation on the waterways, which receives a very, very large subsidy per ton-mile, compared to the other modes of transportation with which it competes. And I think that there is general agreement regarding the result of the differential subsidies—and we can quarrel certainly about the magnitude of those subsidies but I think we wouldn't quarrel that the waterways do receive the largest subsidy.

Senator PACKWOOD. Excuse me, give me your name again.

Dr. DICKEY. Dickey. D-i-c-k-e-y.

Senator PACKWOOD. I don't want to get into an argument about who got subsidies first. That is a battle that has been going on between the barges and the railroads on one hand and between the trucks and the railroads on another. I can make an argument that the railway got extraordinary grants of land 100 years ago that are now timber rich and coal rich. And that was a subsidy. We wanted them to move west.

All I'm talking about is the wheat rancher in eastern Oregon that is trying to export. We are trying to help this Nation's balance of trade. We export about 90 percent of all the white wheat we grow in Oregon, and that's the bulk of what we grow. And it is not going to get cheaper to export if the user fees on barges go up and then the competitive related fees on railroads go up. How does that help this Nation?

Dr. DICKEY. Well, as I was saying, Mr. Chairman, by removing the subsidy presumably one sends better signals through the economic system as to what is the appropriate mode by which to ship. When you remove the subsidies, ideally, we would hope that would improve the overall efficiency of the Nation's transportation system.

Senator PACKWOOD. I want to come back again. How does that improve the efficiency of the railroads if all they have to do is raise their fees to be just slightly under the price of whatever the barges have to pay? And yet that is not related to the cost of the railroads.

Dr. DICKEY. That's true again, Mr. Chairman. But, on the other hand, the diversion of traffic from the waterway to the railroad is in the overall interest of the economic system if the railroad is, in fact, the cheapest. Cheapest not in terms of the amount of money that is paid, but rather the amount of resources that are used, the real resources. I'm talking about labor, and capital, and so forth. The real resources which go into moving that grain, or coal, or whatever it is from point A to B.

Senator PACKWOOD. Now let's come to the port-user fees. I don't know if this is yours or the Secretary. Do you have roughly the same philosophy about the ports? I don't know if you are talking about a systemwide basis, or a river-basin basis, or what. Should the ports pay their own way also?

Secretary DAWSON. On new construction, we get into differences as far as how deep you dredge the ports. We are not prepared today to enunciate the present-day specifics of the administration's policies.

But, basically, it is that for O&M, we would propose a systemwide recovery fee. For new improvements, the deeper you dredge, the more the particular port should be relied upon to pay in our opinion.

Senator PACKWOOD. You completely lost me on that answer. Again, when you say systemwide, you mean nationwide?

Secretary DAWSON. Yes, sir.

Senator PACKWOOD. All right. Are you saying that all ports ought to pay their own way or are there some ports that should and some ports that shouldn't? Or should they all pay their way partially, or does it depend upon how deep the channel is that you dig, or what?

Dr. DICKEY. If I might, Mr. Chairman, we recognize that we have an existing system of ports which have widely differing O&M costs per ton. We believe that it is equitable to the extent that there is cost recovery for O&M not to disturb the existing competitive relationship among the ports. That's why cost recovery for ongoing operation and maintenance of existing ports should be on a systemwide basis, like the Highway Trust Fund, if you will. The amount that people pay bears no specific relationship to the cost of maintaining their particular element.

On the other hand, when it comes to improvements, I might add, which disrupt the competitive relationship that now exists among the ports, we believe that the specific ports should pay in those cases.

Senator PACKWOOD. I'm just trying to find the philosophy you are moving toward. Do you feel the same way, then, about airports and small towns? It's cheaper to take the bus from the small town than it is the airport. If you mean cost, should they therefore lose their airplane service because it is not cost effective?

Dr. DICKEY. But, again, we are not proposing user fees to shut down any existing ports, but rather that in the case of improvements that the beneficiaries of that port—and presumably the benefits do——

Senator PACKWOOD. All right. I will give you an example then. A new generation of jets comes along. Towns of 75,000 or 100,000 that used to be able to be served by a jet that could land on 5,000 feet is no longer served because the jet now needs 7,000 feet to land. Clearly in order to accommodate that, that's construction. That isn't operation and maintenance.

At that stage, should that town be out of luck? Because it doesn't have enough passengers to justify having plane service, let them take the bus.

Dr. DICKEY. Well, each of these problems represents a judgment between various competing interests—equity, efficiency and so forth. Obviously, we can differ as to how those should be balanced. But it's through the political process that that balance must be reached.

Senator PACKWOOD. I see this administration going this way on telephone service in terms of attempting to impose user fees on residential telephone use. We are moving more and more in every area—communications, transportation—toward user-based charges. You are going to pay for your own telephone. You are going to pay for your own highway. You are going to pay for your own port. And if that philosophy is going to be carried to its ultimate, there are going to be great areas of this country that are unserved by ports, or airports, or telephones.

If that's the philosophy we want—I don't accept that—but if that's the direction we want to go, let's debate it on that basis, and not try to back into it or hide what we are doing by some gobbledygook in terms of language of the Secretary of the Army appointing commissions to determine user fees.

For 200 years we had a concept of tying this Nation together in communication and transport. And we knew that there were sections of this country that could not pay for their own way. If we are going to leave that, so be it. I will fight it I'm opposed to it. But I think we ought to face it realistically.

Secretary **Dawson**. Mr. Chairman, if I might note on that point. It is certainly not our intent or belief that it will result in the closure of ports or waterways. The alternative, we feel, of not having more funds from whatever source you the Congress decides is best is not an acceptable alternative either because the needs of the system are so great.

Senator **Packwood**. Thank you.

Jack.

Senator **Danforth**. Mr. Secretary, hasn't the Corps of Engineers of the Department of Army projected the costs that should be incurred for the construction, rehabilitation, renovation, operation, maintenance for the inland waterways of the United States——

Dr. **Dickey**. If I may answer that, Senator. Yes, various projections have been made. We would be happy to supply those for the record.

Senator **Danforth**. Could you do that today, you think? The reason I ask that is that Senator Abdnor indicated that it was his idea that we wouldn't get to the $646 million cap for a number of years. It's my understanding that, in fact, the Department of the Army has made projections as to what it thinks will be required. And the barge industry has, in turn, taken those projections and computed what it believes the fuel costs would be, assuming that the user tax is in the form of fuel costs.

Dr. **Dickey**. Let me just say, Senator, that of course there are a variety of projections that are available. I'm not really sure, frankly, of the significance of them. Obviously, one can make different assumptions and come up with different projections.

Senator **Danforth**. What we have got to do is get the best available indication of what the cost projections are in the future. And when those costs would come into being. Then we can try to judge what sorts of costs can be borne by this industry.

Dr. **Dickey**. I think it's very important to recognize that one might expect quite a different expenditure pattern with the kind of mechanism proposed in S. 1739 than you would without it. Certainly, whatever studies the corps has made are without the benefit of the interaction which we would expect to take place between the users as they carefully screen among the projects.

Senator **Danforth**. Well, I will get to that in a minute. But the corps is now in the business of maintaining the inland waterway system. Yet I suppose it has some judgment itself on what is going to be required and what should be done in the years ahead. And what I wanted to get is the estimates of the Corps of Engineers and do it over a period starting the fiscal year ending September 30, 1986, and then beyond.

Dr. **Dickey**. We will get that to you as soon as we can, sir.

Senator **Danforth**. Thank you.

[The information from Secretary Dawson and Dr. Dickey follows:]

27 June 1984

INLAND WATERWAY PROJECTS (S. 1739)
ACTUAL AND PROJECTED EXPENDITURES SUBJECT TO CAP
($ MILLIONS)

Appropriation	Actual	Actual	Actual	Actual	Est	Est	Projected								
Title	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
O&M, General	184	215	216	247	314	288	311	328	344	360	377	395	414	433	453
Other[1]	33	28	39	30	57	33	35	37	39	41	43	45	47	49	51
Construction, General															
Ongoing (Scheduled)	392	380	391	327	251	256	231	208	167	135	81	29	5	5	5
Other[1]	9	9	9	7	3	3	0	0	0	0	0	0	0	0	0
Major Rehabilitation	26	32	27	24	18	28	20	30	30	30	30	30	30	30	30
MR&T[2]	42	48	51	60	60	61	62	64	65	66	67	68	69	70	71
Subtotal A	696	712	733	695	703	669	659	667	645	632	598	567	565	587	610
Construction, General Authorized, but Unscheduled:															
Red River Waterway, L&D 3, 4 & 5								20	58	85	85	100	100	100	100
Subtotal B								20	58	85	85	100	100	100	100
Construction, General New Projects Included in S. 1739 & Supported by Administration:															
Gallipolis L&D						1	6	7	13	45	50	63	60	55	51
Bonneville L&D						3	5	17	29	40	45	35	18	16	15
Subtotal C						4	11	24	42	85	95	98	78	71	66
Construction, General. New Projects Included in S. 1739 not yet Reviewed by Administration															
Monongahela L&D 7						1	2	3	22	30	25	20	15	7	5
Monongahela L&D 8						1	2	2	11	25	26	10	4	1	0
L&D 26-2nd Lock						1	3	4	4	44	49	45	35	30	27
Subtotal D						3	7	9	37	99	100	75	54	38	32
Summations:															
A+B	696	712	733	695	703	669	659	687	703	717	683	667	665	687	710
A+C	696	712	733	695	703	673	670	691	687	717	693	665	643	658	676
A+D	696	712	733	695	703	672	666	676	682	731	698	642	619	625	642
A+B+C+D	696	712	733	695	703	676	677	720	782	901	878	840	797	796	808

L = Land Acquisition
C = Construction

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[1] Includes small boat harbors and other river segments less than or equal to 14 feet in depth, not included in S. 1554.
[2] The MR&T appropriation reflects a 20% factor of the total MR&T expenditure.

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Senator **Danforth**. Now, Mr. Secretary, in your prepared testimony—and I, frankly, didn't hear whether you said this orally or not—you say in your prepared testimony "we believe that it should be clearly established that this board"—meaning the users board—"is purely advisory in nature, and that the Secretary of the Army retains full authority to set the form and amount of user fees for the inland waterways."

Is it your view that the bill before us now establishes that the board is purely advisory? Or do you think that the bill should be amended to establish that it is purely advisory?

Secretary **Dawson**. Senator, I'm not sure that it is clear in the bill as now written. That would be our hope that it would be clarified one way or the other. There are a number of safeguards, if you will, that would restrain, I think, any Secretary of the Army. One important one, of course, is the appropriations process. There are a number of others than I can go into, if you would like.

Senator **Danforth**. Well, I don't know about the appropriations process. It's my understanding that the decision is made by the Secretary of the Army. And Senator Abdnor was of the view that actually the Secretary of the Army could not make any decision which was not approved by the board. Your view is, by contrast, that the board should be purely advisory in nature. And it's my understanding that you think that the bill is ambiguous as to whether the board is advisory or whether it has a mandatory role.

Secretary **Dawson**. Yes.

Senator **Danforth**. Thank you.

Senator **Dole**. Is there a precedent or other statutes which authorize the Secretary of the Army to impose and collect fees in other areas?

Secretary **Dawson**. Certainly, in the recreation field, Senator. Yes, sir.

Senator **Dole**. And what specific areas? That's the part that troubles us. Whether or not the Secretary should have that authority. Whether it should be retained by Congress, the section 502 and section 1006. But are there specific areas where you actually impose fees based on a delegation of authority by Congress to the Secretary?

Secretary **Dawson**. Yes, there are. And maybe Dr. Dickey could elaborate.

Dr. **Dickey**. Well, specifically, for use of recreation facilities such as camping.

Senator **Dole**. Right.

Dr. **Dickey**. The use of special recreation facilities such as group picnic shelters, amphitheaters and multipurpose courts.

Senator **Dole**. You don't see any problem with this delegation? No constitutional problem?

Secretary **Dawson**. It's certainly not our intent, Senator, to have anything that is not constitutional. Our preliminary examination indicates that it is.

Senator **Dole**. Well, I think obviously if you listen to some of the members of the committee who are present that that is a matter of some concern, whether we should yield that authority to the Secretary of the Army or any other Secretary to impose—not that we have any quarrel with the Secretary of the Army. He happens to be a very fine, outstanding friend of mine.

So it is an area, of course, that we are looking at. I won't spend anymore time on it now because I know there are other witnesses. But those are the two sections. And we will take a look at some of the other areas where you do have that authority.

Thank you.

Senator PACKWOOD. Thank you very much.

We will now move onto a panel that consists of Stephen A. Van Dyck, president, Sonat Marine, Inc.; Joseph Farrell, president, American Waterways Operators; and Albert E. May, executive vice president, Council of American-Flag Ship Operators, accompanied by Mark Fink on behalf of the U.S. and Foreign Flag Ship Operators.

Gentlemen, as you are aware, as a matter of habit we do not hold our fellow Senators or the administration to time limits, but we would appreciate it if you could observe the time limits about which you have been advised. And you will see these lights go on here as a warning to you as you are coming to the end of your time limit.

Mr. Van Dyck?

STATEMENT OF STEPHEN A. VAN DYCK, PRESIDENT, SONAT MARINE, INC., PHILADELPHIA, PA

Mr. VAN DYCK. Mr. Chairman, thank you.

My name is Stephen Van Dyck, and I'm president of Sonat Marine, headquartered in Mr. Heinz' State of Pennsylvania.

We are the country's largest independent operator of coastwise petroleum vessels. And in the year just ended, we had profits of about $4 million. The only hitch with that was that it took $250 million worth of assets to produce that small profit.

We have been working constructively with various members of the industry and with Senator Abdnor and many other Members of both the House and the Senate to try to get a bill which we would find somewhat acceptable to our industry. We have submitted written testimony today to you which I think addresses a number of key points. I would like today to just make one major point, and perhaps a couple of small points which we feel are important and that you might focus on.

Our comments are entirely directed at title 10 of this bill since we and most of our fellow companies only operate along the coast of the United States and therefore coastal ports.

First of all, with regard to section 1006, we feel very, very strongly—and I think my views are supported by all coastal and foreign flag and American deep sea operations—that no vessel which requires less than 45 feet should be asked to share in any way shape or form in port deepening projects beyond 45 feet.

This may seem like a technicality of small point to you, but having done the economics, we can assure you and your committee this is a very serious sticking point with us.

Senator Abdnor has tried to be responsive to our concerns and will propose an amendment on the floor, we understand, which will try to respond to our concerns. We don't feel that is going to quite measure up to our requirement.

We would ask the committee for an amendment which would prohibit local authorities the right to tax users that do not require a full 45 feet.

Now you might ask why do we feel so strongly about that. No. 1, American-flag operators and coastal operations, generally speaking, have no requirement for 45 feet or greater. In fact, the bulk of the 10,000 American-flag vessels require substantially less than 20 feet. So port deepening beyond 45 feet speaks to a very specific interest, as in many ways demonstrated by the original supporters of port deepening.

So since the American flag and coastal operators in no way benefit from these, we feel strongly that we should look to the true beneficiaries of that particular legislation.

It's ironic to us after all this time that the original market test, which was proposed by the administration and many others, should now be abandoned when we see that the ports are not financible by revenues only from port deepening. So now they are looking to operators like ourselves who derive no benefit to guarantee the debt.

So our request to you is not to require that we be guarantors of debts for port deepening beyond 45 feet.

A number of other very quick comments. We do not feel that the concept of a passthrough is any longer viable. In the deregulated environment in which all of us operate, there is no such thing as a passthrough of a user fee in any way, shape or form. And many industries are testimony to that particular fact.

The Jones Act operators are operating under an extremely difficult environment, all of our markets are shrinking and will continue to shrink. A small number of operators have been productive. A small number of operators have been innovative. A small number of operators have been competitive.

And we ask you at this particular time not to take additional steps to burden those of us who have been aggressive, who have done a good job at supporting the national interest, to be burdened with additional user fees and problems with regard to this port legislation.

Thank you, sir.

Senator PACKWOOD. I agree with you completely.

[The prepared written statement of Mr. Van Dyck follows:]

STATEMENT OF

STEPHEN A. VAN DYCK
PRESIDENT
SONAT MARINE INC.

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
COMMITTEE ON FINANCE
UNITED STATES SENATE

June 5, 1984

Good morning Mr. Chairman and members of the Subcommittee. My name is Stephen A. Van Dyck. I am President of Sonat Marine Inc., which is the nation's largest independent U.S.-flag carrier of petroleum products. We operate a fleet of 40 tugs and 54 barges on the Atlantic and Gulf coasts. These barges range in capacity from 5,000 barrels to 262,000 barrels.

I am pleased to have the opportunity to appear before you today, and am particularly encouraged that the Subcommittee has solicited the testimony of U.S.-flag carriers. Both the general subject of deep-draft user fees and the specific provisions of S. 1739 are of critical importance to the U.S.-flag merchant marine.

One of the principal reasons for our deep concern over port financing legislation is that S. 1739, as many of the other port development bills introduced in both this and the 97th

Congress, is predicated on the assumption that vessel operators have the ability to pass on their user fees to the shippers they serve. Unfortunately, the independent operators of U.S.-flag vessels are currently forced to absorb newly imposed or increased costs, and would certainly have to absorb most, if not all, port user fees.

There now exists, and will continue in the long term to be, a severe overtonnaging problem in the domestic marine transportation industry. Today, many independent vessel operators are offering at or below-cost rates just to keep their equipment operating. The flexibility simply does not now exist in either the spot market or in long-term charters to pass on substantial portions of new user fees to our customers without losing cargo to waterborne competitors or other transport modes.

In addition, in recent months the carrier industry, particularly coastal oil carriers, has had to include a provision in their contracts with shippers which would allow the shipper to cancel the contract in the event of the imposition of additional user fees. This right of contract termination clearly indicates that shippers are not about to allow carriers to pass through port user fees. This is a fact which we urge the Committee not to overlook.

I have twice testified on the issue of port development in the 98th Congress before the Water Resources Subcommittee of the Senate Committee on Environment and Public Works. My most recent statement dealt specifically and in considerable detail with Title X of S. 1739. My remarks then were presented in behalf of both Sonat Marine and the Transportation Institute, an organization of 174 member companies which includes virtually every sector of the U.S.-flag maritime industry, including operators of oceangoing vessels in the nation's foreign trade, coastal and noncontiguous tankers, liners, tugs, and barges engaged in domestic commerce, Great Lakes dry bulk vessels and tugboats, and inland river towboats. The concerns and suggestions included in my earlier statement reflected the consensus opinion of these many and diverse marine operators serving America's ports. Since the time of the Water Resources Subcommittee hearing last January, Sonat Marine has worked very closely with the Institute and several other carriers and carrier associations in the development of a consensus position on S. 1739. I am pleased to say that the two amendments I will suggest to you today are broadly supported by both U.S. and foreign carriers calling on American ports.

Mr. Chairman, we are extremely pleased and appreciative that you and the other members of the Finance Committee were sufficiently concerned with the development of water resources policy to have sought and secured jurisdiction over certain sections of S. 1739. My statement today will address the need to amend section 1006 of the legislation. Additionally, while I recognize that the Finance Committee has not secured jurisdiction over section 1003 of the bill, the problems engendered by this section are closely interrelated to those of section 1006, and I would like to take this opportunity to convey our concerns with section 1003 as well.

THE NEED TO AMEND SECTION 1006

Subsection 1006(a), as Senator Abdnor proposes to amend it when S. 1739 is considered on the Senate floor, would grant consent to both general cargo and deep-draft ports to impose user fees on vessel operators to recover the local share of improvement and operation and maintenance (O&M) costs. The provisions contained in that subsection governing the establishment of a user fee schedule are as follows:

> Such fees shall be established after a public hearing held pursuant to State law and shall reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

Mr. Chairman, it is in this provision where we believe Title X of S. 1739 has its most onerous shortcoming, and which causes grave concern to vessel operators with respect to both deep-draft and general cargo port user fees.

Deep-Draft Ports

For deep-draft ports, those with channels in excess of 45 feet, we believe that the provisions governing the imposition of user fees must be much more specific. While we appreciate the recognition of the Committee on Environment and Public Works that the beneficiaries of port projects should pay the costs associated with those projects, we are very concerned with the latitude the Committee proposes to give deep-draft local ports to define the phrase "reflect to a reasonable degree the benefits provided."

Sonat Marine believes that the provision as now written would permit a deep-draft port to impose at least some user fees to recover its local share of improvement and O&M expenditures for the portion of a channel deeper than 45 feet on vessels not requiring channel depths in excess of 45 feet. Not only is this latitude unfair and injurious to both American and foreign vessel operators and shippers who do not need nor who would utilize channels deeper than 45 feet, but it ignores both the underlying impetus for the construction of deep-draft harbors and the fundamental tenet of user fees. Specifically, channels in excess of 45 feet will serve as special purpose projects for certain bulk cargoes -- particularly coal, and that under any equitable cost recovery regime for super deep channels, the direct users and beneficiaries of the project should be those charged the fees to finance the improvement and maintenance. Indeed, the Environment and Public Works Committee itself acknowledges that there is a distinct economic difference between general cargo and deep-draft ports by virtue of the fact that S. 1739 proposes different levels of cost recovery for each. Therefore, inasmuch as S. 1739 recognizes the unique and special purpose of deep-draft harbors, we believe that only those truly benefitting from super deep channels should pay the user fees associated with those projects.

We believe that the Congress has at least two fundamental and related issues to address in its consideration of port development legislation -- only one of which Title X of S. 1739 has thus far resolved. First, it is Congressional responsibility to formulate a financing policy for deep-draft port improvements; secondly, the Congress must also address the important corollary of identifying the direct beneficiaries. While we recognize that S. 1739 addresses the overall financing of deep-draft ports, we are very concerned that it does not seek to identify the direct beneficiaries who should pay user fees.

The direct beneficiary component of port financing policy is the one perhaps most vulnerable to abuse by local ports, and is therefore one which the Congress must resolve before enacting port development legislation. We suggest that the resolution lies in the inclusion of specific language in section 1006 defining those who benefit directly and who should consequently assume the responsibility for financing deep-draft harbor projects. It is our strong opinion, and the opinion of a broad base of carriers and shippers, that the identifiable beneficiaries of deep-draft ports are those vessels and shippers requiring a channel depth in excess of 45 feet.

General Cargo Harbors

With respect to general cargo harbors, we perceive a potential nightmare facing the carrier industry if each U.S. port is given the latitude to establish the type, amount, and number of fees it sees fit to impose on practically anyone it chooses. In this regard, S. 1739 proposes to defer to local ports the resolution of an issue which has been so difficult, sensitive, and controversial that the Congress itself has not been able to come to grips with it. We believe that deferring this matter to local ports is taking a bad problem and making it worse. We urge this Committee and the Congress to assume the responsibility which appropriately belongs here to address specific user fee mechanisms. To do otherwise is tantamout to transferring congressional policymaking responsibility to local entities which will be guided by parochial interests and which will ignore national water policy considerations. Imagine the response of the American public were the tax committees of the

Congress to take like action and instruct the Internal Revenue Service to lessen the Federal deficit through the imposition of whatever new taxes it chose to establish.

On the practical side, the burden on vessel operators will be overwhelming if the Congress does not itself address this issue. I can already see that Sonat Marine alone would have to hire a bevy of lawyers to do nothing but fly up and down the East and Gulf Coasts arguing at least 24 different times at the 24 major ports we serve as to who are the beneficiaries of port deepening, who should pay how much, how fee schedules should be structured, etc. One only needs to multiply our activity by the hundreds of U.S. carriers serving American ports to appreciate the serious economic ramifications of the proposal in S. 1739 to allow local ports to establish individual user fees.

In addition to the unwarranted necessity of defending our interests at a score of U.S. ports, the U.S. carrier industry would suffer severe administrative burdens if each port levied its own type and number of user fees. The bookkeeping quagmire alone under that scenario would be overwhelming. Beyond that, S. 1739, in its current form, would make it virtually impossible for vessel operators to negotiate long-term contracts or to engage in meaningful business planning, as any number of ports may levy new user fees or change their existing fee structure virtually at will.

We are also concerned that some fees which ports may choose to levy might be prohibitively expensive or unworkable, particularly with respect to petroleum. Using Sonat Marine as an example, we accomplished over 9,500 separate cargo loadings and discharges in 1982. One of our typical Gulf Coast movements may involve the loading of cargo at Corpus Christi, Texas, with final discharge taking place at Port Everglades or Jacksonville, Florida. However, along the way, that vessel may also stop at Beaumont, Texas, Lake Charles, Louisiana, New Orleans, and Tampa, either loading additional cargo or discharging cargo at each port. Given this typical complexity of petroleum transportation, perhaps the same product may be subject to user fees over half a dozen times. Even if there were a provision prohibiting multiple user fees on the same product, we see no workable way for fees to be properly assessed on a liquid bulk cargo. Moreover, given the fact that almost 85 percent of all domestic coastal commerce is crude petroleum and petroleum products, the administrative difficulties of disparate user fees will not be unique to Sonat Marine.

Mr. Chairman, recognizing the serious and likely problems involving administration, fairness, cost, and undue burden on the carrier industry which S. 1739 would engender by granting such broad latitude to general cargo ports, we strongly urge that Congress itself define the appropriate user fee mechanism for cost recovery at general cargo harbors.

THE NEED TO AMEND SECTION 1003

Mr. Chairman, I would also like to briefly address another proposed amendment to Title X of S. 1739 which we and other carriers believe is critical to the American merchant marine. I recognize that your Committee does not have jurisdiction over section 1003 of S. 1739 at this time, but we feel strongly that the provisions of this section are closely tied to our concerns with section 1006. Indeed, adoption of this second amendment would alleviate several of our concerns with section 1006.

The amendment we propose would simply delete section 1003 in its entirety, thereby eliminating the 30 percent cost recovery requirement for general cargo harbor improvements. This amendment would have at least two important results.

First, it would recognize the inescapable axiom that the beneficiaries of general cargo ports are not clearly identifiable. Inasmuch as the nation is wholly dependent on general cargo harbors as the conduit for 95 percent of its foreign trade and a significant portion of domestic commerce, it is inconsistent to require local entities to fund part of the bill for channel improvements. The report of the Environment and Public Works Committee to S. 1739 states that the role of general cargo harbors in America's foreign and domestic trade "is essential to national commerce." The report concludes its discussion of general cargo harbors by stating, "Consequently, the retention of significant Federal participation is justified." Given the consensus which has emerged in the course of Congressional consideration of the port development issue regarding general cargo harbors, it follows that the Federal government should continue to fully fund their future development. Moreover, because of the significant contribution ports provide to many sectors of the American economy and the national defense, it is simplistic to assume that vessel operators are the sole beneficiaries of port improvements and should therefore pay the costs of such improvements.

Secondly, deletion of section 1003 will recognize that Congress should only enact legislation which mandates a specific level of cost recovery in conjunction with a specific user fee mechanism to achieve the cost recovery goal. As presently constituted, S. 1739 addresses only one half of the equation, deferring the sensitive and controversial issue of a user fee mechanism to local ports. We do not believe that this is an appropriate or sound approach to the development of water resources policy. If the question of user fee mechanisms for port improvements is one which the Congress cannot resolve at this time, then we suggest that the charter of the National Commission on Harbor Maintenance be expanded to include an examination of the issue, and the development of a recommendation to Congress at the same time it reports on the financing of general cargo harbor operation and maintenance projects. However, in the interim, equity and logic dictate that the 30 percent cost recovery requirement of Section 1003 be postponed until the user fee mechanism question is resolved.

Therefore, Mr. Chairman, in order to protect carriers and shippers of general cargo, petroleum products, and the thousands of other commodities moving through U.S. ports from unfairly being singled out to fund port improvements which are clearly vital to the nation's security and economy, and to allow Congress the time to fully consider and resolve the question of an appropriate user fee mechanism, S. 1739 should be amended to delete the 30 percent cost recovery provision for general cargo harbors in section 1003.

CONCLUSION

Mr. Chairman, I wish to emphasize that neither Sonat Marine, nor any of the other carriers serving American ports with which we have worked, wishes to block or delay badly-needed port development project authorizations. My only purpose in suggesting our amendments to you today is to refine the legislation to make it a more equitable and sound piece of public policy; our intent regarding Title X of S. 1739 is the same as this Committee's -- refine and perfect, not stall or kill. We simply wish to insure that the development of America's ports is not accomplished at the expense of debilitating its merchant marine, in which billions of dollars have been invested by Americans, and which directly employs hundreds of thousands of U.S. citizens and provides many more jobs to allied industries and shoreside employees.

We greatly appreciate your efforts in examining Title X of this legislation and respectfully ask that this Committee seriously consider our suggested amendments, which are summarized below:

- Amend section 1006 to prohibit the imposition of user fees for deep-draft improvement and maintenance projects on vessels not requiring harbor channels in excess of 45 feet.
- Delete section 1003, which will eliminate the 30 percent cost recovery requirement for general cargo harbor improvements.

Thank you for this opportunity to present our thoughts on the question of port development and maintenance funding, the resolution of which will have a substantial impact on the future health of the U.S.-flag merchant marine. I will be glad to answer any questions that you may have.

STATEMENT OF JOSEPH FARRELL, PRESIDENT, AMERCIAN WATERWAYS OPERATORS, INC., ARLINGTON, VA

Senator **Packwood**. Mr. Farrell.

Mr. **Farrell**. Mr. Chairman, the American Waterways Operators or AWO's is the national association for the inland and coastal barge and towing industry.

I would like to try to capture our testimony, which we submitted for the record, with two illustrations. First, in title 10. In the general context of exports, my understanding is that our balance of trade deficit is now growing at double the rate of last year, which was a record year, and this legislation contemplates increasing, in essence, the cost of exports.

That makes absolutely no sense at all to me.

With respect to section 502, apart from the constitutional issues, which, of course, are best left to you, let me just talk about business planning. How do you plan your business if you don't know what the cost of doing business is going to be? There has been much said about the cap and the user board, and the respect which would be paid to the recommendations of this advisory board.

Imagine the circumstance where the advisory board would recommend to the Secretary of the Army three projects that just fit within a cap, and a wise, influential and more sophisticated Member of Congress, would press for a fourth project which would cause costs to exceed the cap. The user fee would go up.

I submit that there is a very strong likelihood that that Member would prevail. And the industry, then, would end up paying for that particular decision.

You can't run a business if you don't know what the cost of doing business is going to be. And that's what the mischief is in section 502, among others.

Thank you, Mr. Chairman.

[The prepared written statement of Mr. Farrell follows:]

STATEMENT
OF
THE AMERICAN WATERWAYS OPERATORS, INC.

MR. CHAIRMAN, I AM JOE FARRELL, PRESIDENT OF THE AMERICAN WATERWAYS OPERATORS, INC. (AWO). AWO IS THE NATIONAL TRADE ASSOCIATION REPRESENTING THE INLAND AND COASTAL BARGE AND TOWING INDUSTRY. OUR 250 MEMBERS RANGE FROM COMPANIES OWNING AND/OR OPERATING ONE OR TWO VESSELS TO THOSE WITH OVER 60 TOWBOATS AND 1600 BARGES.

WE APPRECIATE THIS OPPORTUNITY TO COMMENT ON SECTIONS 502 AND 1006 OF S. 1739, THE WATER RESOURCES DEVELOPMENT ACT, AND WANT TO COMMEND THE COMMITTEE ON FINANCE FOR ASSERTING JURISDICTION OVER THESE PROVISIONS. THIS COMMITTEE PLAYED A PIVOTAL ROLE IN THE DEVELOPMENT OF P.L. 95-502 WHICH INAUGURATED THE WATERWAY FUEL USER TAX PAID BY THE INLAND TOWBOAT INDUSTRY TO THE U.S. TREASURY. WE FEEL THAT IT IS IMPERATIVE THAT THIS COMMITTEE REVIEW AND REVISE, AS IT DEEMS FITTING, THE REVENUE-RAISING PROVISIONS IN S. 1739.

SECTION 502 WOULD AUTHORIZE THE SECRETARY OF THE ARMY TO IMPOSE, COLLECT AND OBLIGATE USER CHARGES ON THE COMMERCIAL USERS OF THE INLAND WATERWAYS AND HARBORS OF THE U.S. TO THE DEGREE NECESSARY FOR ADDITIONAL (OVER AND ABOVE AN ANNUAL CAP ON FEDERAL EXPENDITURES) CONSTRUCTION, REHABILITATION, RENOVATION, OPERATION AND MAINTENANCE OF COMMERCIAL NAVIGATIONAL FEATURES AND COMPONENTS OF THE INLAND WATERWAYS AND HARBORS OF THE U.S. SO THEY ARE SUFFICIENT TO MEET THE NEEDS OF THE COMMERCIAL WATERWAY USERS. WHILE SECTION 502 RECOMMENDS THAT THE SECRETARY CONSULT AN ADVISORY USERS BOARD TO DETERMINE EXPENDITURE NEEDS SUFFICIENT TO MEET THE REQUIREMENTS OF COMMERCIAL USERS, THERE IS NO OBLIGATION FOR THE SECRETARY TO ACCEPT THE RECOMMENDATIONS OF THE USERS BOARD. THEREFORE, SECTION 502 ESSENTIALLY GIVES THE SECRETARY

OF THE ARMY A BLANK CHECK TO IMPOSE EVEN HIGHER USER FEES ON INLAND WATERWAY USERS, WITHOUT EFFECTIVE INVOLVEMENT OF THE CONGRESS.

AWO HAS SERIOUS RESERVATIONS ABOUT ANY INITIATIVE TO DELEGATE TAXING AUTHORITY TO THE EXECUTIVE BRANCH. THE POWER TO TAX IS, IN FACT, THE POWER TO DESTROY. WHETHER REFERENCING FEES, TAXES, CHARGES OR TOLLS, WE FEEL THAT SECTION 502 VIOLATES THE CONSTITUTION WHICH CONFERS TAXING POWER UPON CONGRESS, A PLURALISTIC BODY WHICH IS THE PEOPLE'S BRANCH OF GOVERNMENT.

PROPONENTS ARGUE THAT GREATER COST SHARING WILL FERRET OUT WATER PROJECTS WHICH ARE UNECONOMICAL AND NOT IN THE PUBLIC INTEREST. WE AGREE THAT GREATER EFFICIENCIES MUST BE WOVEN INTO PROJECT AUTHORIZATION; HOWEVER, TITLE V OF S. 1739 DOES NOT PROVIDE THIS DISCIPLINE. IT MERELY CAPS THE GOVERNMENT'S INLAND WATERWAY OBLIGATION, LEAVING AT RISK THE USERS OF THE WATERWAY SYSTEM FOR ANY "INLAND NAVIGATION" PROJECT AUTHORIZED BY CONGRESS. IN EFFECT, FEDERAL EXPENDITURES ARE CAPPED AND THE PRIVATE SECTOR IS LEFT EXPOSED TO PAY FOR POLITICAL DECISIONS.

ON THE PRACTICAL SIDE, SECTION 502 WOULD MAKE BUSINESS PLANNING VIRTUALLY IMPOSSIBLE. THIS SECTION ALLOWS NO CONTROL OVER ANNUAL FLUCTUATIONS IN INLAND WATERWAY FUNDING REQUIREMENTS -- AND THE RESULTANT ANNUAL FLUCTUATIONS IN USER FEES -- WHICH MAKES IT IMPOSSIBLE FOR CARRIERS AND SHIPPERS TO ANTICIPATE THE COST OF DOING BUSINESS. THE INABILITY TO FORECAST THESE COSTS GUARANTEES THE INABILITY TO PLAN THE FUTURE OF ANY BUSINESS.

MR. CHAIRMAN AND MEMBERS OF THIS SUBCOMMITTEE, WE URGE YOU TO REMOVE THE AUTHORITY OF THE SECRETARY OF THE ARMY TO IMPOSE WATERWAY USER FEES AND LEAVE THAT AUTHORITY RESIDENT IN THE CONGRESS.

MR. CHAIRMAN, WHILE THE AGREEMENT OF REFERRAL DOES NOT MAKE REFERENCE TO SECTION 504, WE ARE COMPELLED TO ADDRESS IT. THIS SECTION IS KIN TO SECTION 502 AND IS AS OMINOUS. WHILE SECTION 504 APPEARS TO REVISE THE PROCEDURE BY WHICH THE SECRETARY OF THE ARMY CAN REPLACE OR REPAIR NAVIGATION FACILITIES WITHOUT SPECIFIC CONGRESSIONAL AUTHORIZATION, IT IS FAR MORE MISCHIEVOUS BY WHAT IT WOULD OMIT. IT REPEALS THE HISTORIC PROHIBITION AGAINST TOLLS OR OPERATING CHARGES CONTAINED IN THE FIRST 52 WORDS OF SECTION 4 OF THE RIVERS AND HARBORS ACT OF JULY 5, 1884 (23 STAT. 147) AS AMENDED MARCH 3, 1909 (33 U.S.C. 5), WHICH THE PROPOSED SECTION 504 WOULD FURTHER AMEND.

IF THIS STATUTORY PROHIBITION IS NOT RESTORED, THE SECRETARY WOULD BE FREE TO IMPOSE USER FEES ADMINISTRATIVELY. THUS, GRANTING THIS AUTHORITY TO THE EXECUTIVE BRANCH WOULD EFFECTIVELY BYPASS CONGRESSIONAL APPROVAL OF HIGHER USER TAXES.

A WORD ABOUT INLAND USER FEES, IN GENERAL. PARTLY AS A RESULT OF THIS COMMITTEE'S WORK SEVERAL YEARS AGO, THE INLAND WATERWAY FUEL USER TAX WAS ESTABLISHED IN 1978 AND WENT INTO EFFECT OCTOBER 1, 1980, AT THE RATE OF 4¢ PER GALLON ON FUEL USED FOR PROPULSION BY SHALLOW-DRAFT VESSELS OPERATING ON 26 SEGMENTS OF OUR INLAND WATERWAY SYSTEM. THIS TAX INCREASED TO 6¢ PER GALLON ON OCTOBER 1, 1981, AND THEN TO 8¢ PER GALLON ON OCTOBER 1, 1983. IT WILL INCREASE TO 10¢ PER GALLON ON OCTOBER 1, 1985.

AS OF THIS SPRING, OVER $110 MILLION HAS ACCRUED IN THE INLAND WATERWAYS TRUST FUND. THESE FUNDS, ALTHOUGH MANDATED IN P.L. 95-502 FOR USE IN CONSTRUCTION, REHABILITATION AND REPLACEMENT OF INLAND WATERWAY PROJECTS, HAVE NEVER BEEN UTILIZED. BEFORE ANYONE THINKS ABOUT ASKING OUR INDUSTRY TO PAY EVEN HIGHER TAXES WE FEEL, AS A MATTER OF COMMON SENSE AS WELL AS EQUITY, THAT

EXISTING INLAND WATERWAYS TRUST FUND RECEIPTS BE UTILIZED FOR THEIR CONGRESSIONALLY-MANDATED PURPOSE. OUR INDUSTRY IS ANXIOUS TO ASSIST IN THE DEVELOPMENT OF A LONG-TERM FINANCING PROPOSAL FOR THE INLAND WATERWAY SYSTEM, PHASED IN TO AVOID FURTHER ECONOMIC HARDSHIP. WE HAVE ESTABLISHED A COALITION OF CARRIERS AND SHIPPERS AND REGIONAL DEVELOPMENT GROUPS SO THAT WE CAN WORK TOGETHER IN DEVELOPING SUCH A PLAN. UNTIL A LONG-TERM SOLUTION IS DEVELOPED, WE RECOMMEND THE ADOPTION OF THE FUNDING MECHANISM CONTAINED IN TITLE II OF H.R. 3678, THE WATER RESOURCES CONSERVATION, DEVELOPMENT, AND INFRASTRUCTURE IMPROVEMENT AND REHABILITATION ACT.

WITH RESPECT TO THE SEVEN TOP PRIORITY INLAND NAVIGATION PROJECTS, THIS BILL WOULD USE THE FUNDS OUR INDUSTRY HAS ALREADY PAID INTO THE INLAND WATERWAYS TRUST FUND, COMBINED WITH FUTURE PAYMENTS WE WILL MAKE INTO THE TRUST FUND, TO FINANCE ONE-THIRD OF THE COST OF THESE PROJECTS. THE REMAINING TWO-THIRDS OF CONSTRUCTION COSTS WOULD COME FROM FEDERAL APPROPRIATIONS. THIS PLAN PROVIDES A VERY SIGNIFICANT USER CONTRIBUTION AS IT USES THE WATERWAY FUEL USER TAX AS IT WAS INTENDED BY CONGRESS IN P.L. 95-502. ENACTMENT OF THIS PROPOSAL WOULD ALLOW IMPORTANT DEVELOPMENT TO BEGIN, WHILE PROVIDING AN OPPORTUNITY TO ADDRESS LONG-TERM CONCERNS, SUCH AS COST ALLOCATION, HEALTHY COMPETITION BETWEEN TRANSPORTATION MODES AND ECONOMIC RECOVERY FOR OUR INDUSTRY.

WE SHARE THE CONCERNS OF THIS COMMITTEE OVER THE STAGGERING SIZE OF RECENT FEDERAL DEFICITS AND COMMEND YOU AND YOUR COLLEAGUES FOR TAKING THE RESPONSIBILITY TO ADDRESS THE DEFICIT IN THIS CONGRESS, IN AN ELECTION YEAR. EVERYONE WANTS OUR DEFICIT REDUCED; NO ONE WANTS TO CONTRIBUTE ITS MONIES TO REDUCE IT. THIS COMMITTEE,. AND YOUR COLLEAGUES ON THE COMMITTEE ON WAYS AND

MEANS, HAVE THE UNENVIABLE, BUT TERRIBLY IMPORTANT RESPONSIBILITY FOR DECIDING WHO SHOULD PAY, AND HOW MUCH. IN MAKING YOUR DECISIONS IN THE FUTURE, AS YOU MIGHT LOOK TO THE BARGE AND TOWING INDUSTRY, WE ASK YOU TO BEAR IN MIND:

- WE ARE ALREADY PAYING EVER INCREASING USER FEES AND HAVE BEEN DOING SO FOR FOUR YEARS;
- THE FEDERAL GOVERNMENT HAS YET TO DETERMINE IN ANY WAY WHAT THE FAIR SHARE IS FOR COMMERCIAL NAVIGATION VERSUS OTHER USES OF THE WATERWAYS: ECONOMIC DEVELOPMENT, EMERGENCY PREPAREDNESS, FLOOD CONTROL, IRRIGATION, ENVIRONMENTAL ENHANCEMENT. AWO HAS COMMISSIONED SUCH A STUDY ON ITS OWN. MOREOVER, WE ARE PROPOSING AN INDEPENDENT COMMISSION, MODELED ALONG THE LINES OF THE U.S. RAILWAY ASSOCIATION (USRA) BOARD, TO RECOMMEND TO THE CONGRESS AN ENTIRE SYSTEM PLAN, INCLUDING FINANCING, PUBLIC AND PRIVATE;
- OUR INDUSTRY, WHICH FORMS A VITAL PART OF THE NATION'S TRANSPORTATION SYSTEM, IS IN A DEPRESSION AND IS NOT RECOVERING.

ONCE THESE FACTS ARE WEIGHED ON THE BALANCE, WE BELIEVE YOU WILL AGREE THAT IMPOSING HIGHER TAXES ON THE BARGE AND TOWING INDUSTRY UNDER THESE CIRCUMSTANCES IN ORDER THAT WE CONTRIBUTE TO REDUCE THE CURRENT DEFICIT BY LESS THAN ONE-TENTH OF ONE PERCENT IS FOOLISH PUBLIC POLICY. THE GOVERNMENT WOULD INDEED COLLECT ADDITIONAL PALTRY DOLLARS AND, IN THE PROCESS, REDUCE PRECIOUS...TO THE AMERICAN CONSUMER...COMPETITION IN TRANSPORTATION.

SECTION 1006 OF S. 1739 WOULD AUTHORIZE PORTS TO COLLECT VESSEL USER FEES FOR THE NON-FEDERAL SHARE OF CONSTRUCTION OF GENERAL CARGO AND DEEP-DRAF PORTS AND FOR INCREMENTAL MAINTENANCE BEYOND 45 FEET. AS REPORTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS IN NOVEMBER 1983, SECTION 1006(b) WOULD REQUIRE THAT 80 PERCENT OF ANY USER FEES BE IMPOSED ON DIRECT BENEFICIARIES.

AN AMENDMENT TO THAT SECTION SUBMITTED ON MAY 24, 1984 WOULD REVISE THIS LANGUAGE TO REQUIRE THAT USER FEES SHALL REFLECT TO A REASONABLE DEGREE THE BENEFITS PROVIDED BY THE PROJECT TO A PARTICULAR CLASS OR TYPE OF VESSEL.

AWO MEMBERS OPERATE ON THE EAST, WEST AND GULF COASTS, AS WELL AS ON THE INLAND WATERWAYS OF THE UNITED STATES. THESE COMPANIES AFFECTED BY TITLE X, AND PARTICULARLY SECTION 1006, UTILIZE SHALLOW-DRAFT VESSELS TRANSPORTING SUCH CARGOES AS COAL, CHEMICALS AND PETROLEUM PRODUCTS.

THE LANGUAGE OF SECTION 1006(b) AS REPORTED IN NOVEMBER AND AS NEWLY DRAFTED, IS POORLY CRAFTED IN ITS AMBIGUITY. WE FEEL IT BEGS LITIGATION. WE BELIEVE THAT THE FEDERAL GOVERNMENT MUST IDENTIFY FAIRLY AND ACCURATELY THE TRUE BENEFICIARIES OF PORT PROJECTS, BE THEY WATERBORNE OR SHORESIDE. CERTAINLY, WATER CARRIERS OF ALL OR ANY KIND ARE NOT THE SOLE BENEFICIARIES. SURELY, IT IS NOT SHALLOW-DRAFT WATERWAY OPERATORS WHICH BENEFIT FROM CONSTRUCTION OF DEEP-DRAFT OR "SUPERPORTS" -- AS DEFINED IN S. 1739, THOSE PORTS WITH DEPTHS BEYOND 45 FEET. THESE DEPTHS WOULD ONLY BE REQUIRED FOR THE VERY LARGE COAL COLLIERS, OFTEN FOREIGN-OWNED, FOREIGN-CREWED AND FOREIGN-FLAGGED.

WE RECOMMEND SECTION 1006(b) EXEMPT ALL BUT DIRECT BENEFICIARIES FROM PAYING USER FEES FOR PORT IMPROVEMENTS. THIS WILL ASSIST IN CREATING A "MARKETPLACE" INCENTIVE FOR CONSTRUCTION OF COST-EFFECTIVE SUPERPORTS.

OUR PORT SYSTEM GENERATES $12 BILLION ANNUALLY INTO THE TREASURY THROUGH CUSTOMS RECEIPTS. A RECENT DEPARTMENT OF COMMERCE STUDY CONCLUDED THAT IMPOSITION OF USER FEES FOR PORT OPERATION AND MAINTENANCE WOULD ACTUALLY RESULT IN A NET LOSS TO THE TREASURY DUE LARGELY TO THE DEPRESSING EFFECT ON U.S. EXPORTS. IT SEEMS TO ME MINDLESS FOR ANYONE TO CONTEMPLATE

LEGISLATION WHICH WOULD INHIBIT U.S. EXPORTS WHEN OUR BALANCE OF TRADE DEFICIT IS BILLOWING AT A RATE TWICE THAT OF LAST YEAR, WHICH WAS ITSELF A RECORD DEFICIT. WE FURTHER CONTEND THAT, FOR PORTS 45 FEET IN DEPTH AND SHALLOWER, IMPOSITION OF PORT O&M FEES WOULD ALLOW CERTAIN PORTS UNPRECEDENTED COMPETITIVE ADVANTAGES OVER OTHER PORTS, WHICH WOULD DAMAGE THE LOCAL AND REGIONAL ECONOMIES OF PORTS NO LONGER ABLE TO EFFECTIVELY COMPETE.

MANY MEMBERS OF THIS SUBCOMMITTEE AND THE FULL COMMITTEE ARE AWARE THAT THE DOMESTIC WATER TRANSPORTATION INDUSTRY -- BOTH INLAND AND COASTAL -- CONTINUES TO SUFFER FROM A PUNISHING DEPRESSION FROM WHICH THERE APPEARS NO RELIEF IN THE FORESEEABLE FUTURE. COMPANIES WHICH ONLY A FEW SHORT YEARS AGO WERE REASONABLY PROFITABLE ARE NOW KEPT ALIVE ONLY BECAUSE THE BANKS HOLDING THEIR CREDIT CANNOT AFFORD TO TAKE ON THE BANKRUPTCY BURDEN OF STILL MORE EQUIPMENT WHICH WILL LIE IDLE. WHETHER A SMALL "MOM AND POP" OPERATION OR A SUBSIDIARY OF A LARGE CONGLOMERATE, THOSE COMPANIES WHICH ARE STILL OPERATING ARE FIGHTING TO REMAIN SOLVENT.

AND, NOT ALL OF THESE COMPANIES WILL SURVIVE. OUR COUNTRY CONTINUES TO SHIFT ITS PRODUCTIVE ENERGY AWAY FROM HEAVY INDUSTRY TO HIGH TECHNOLOGY AND THE SERVICE INDUSTRIES. THIS SHIFT TRANSLATES INTO A DECLINING AMOUNT OF TONNAGE TRANSPORTED BY BARGE.

THE FINANCIAL REPORTS OF BARGING OPERATIONS ALL TELL THE SAME UNHAPPY STORY -- "MARINE TRANSPORTATION REVENUES DECREASED IN 1983 BECAUSE OF LOWER UTILIZATION OF VESSELS"..."AS A RESULT OF THE SOFT PETROLEUM TRANSPORTATION MARKET"..."BECAUSE RATE STRUCTURES AND VOLUMES ATTAINED KEPT THE [BARGE COMPANY] OPERATING BELOW THE BREAK-EVEN MARK FOR MOST OF THE YEAR"..."INCOME CONTRIBUTION DECLINED BECAUSE OF A CURTAILMENT OF EXPORT COAL SHIPMENTS, DEPRESSED GRAIN RATES."

THE CONSULTING FIRM OF ARTHUR ANDERSEN RECENTLY CONDUCTED A STUDY OF THE 15 LARGEST INLAND BARGE COMPANIES IN THE U.S. THAT STUDY REVEALED THAT THE AGGREGATE OPERATING PROFIT AFTER INTEREST FOR THESE COMPANIES WAS $133 MILLION ON $1 BILLION OF REVENUE IN 1980. IN 1982, THOSE FIGURES HAD COLLAPSED TO $30 MILLION IN LOSSES ON $894 MILLION OF REVENUE. AND, THESE 15 COMPANIES PAID A TOTAL OF $11 MILLION IN WATERWAY USER TAXES IN 1982... OVER ONE-THIRD OF THEIR COMBINED LOSSES. CURRENT LOSSES ARE EVEN MORE DEVASTATING -- JUST ONE OF THESE COMPANIES SUFFERED OVER $24 MILLION IN LOSSES IN 1983.

IN 1980, THESE COMPANIES TRANSPORTED OVER 92 BILLION TON-MILES OF FREIGHT; IN 1982 THIS FIGURE DROPPED TO 86 BILLION TON-MILES, WITH ESTIMATES IN A SIMILAR RANGE FOR 1983.

THE BARGE INDUSTRY FORMS A VITAL PART OF THE U.S. TRANSPORTATION ECONOMY. WE ARE THE ONLY REAL COMPETITION TO RAIL TRANSPORTATION, SAVING AMERICAN CONSUMERS UPWARDS OF $1 BILLION A YEAR IN FREIGHT COSTS. WE TRANSPORT 13 PERCENT OF THE NATION'S MATERIALS FOR 2 PERCENT OF THE TOTAL TRANSPORTATION BILL. OUR INDUSTRY IS THE SAFEST, LEAST EXPENSIVE, MOST FUEL EFFICIENT AND ENVIRONMENTALLY SOUND MODE OF TRANSPORTATION. IT IS IN THE INTEREST OF THE AMERICAN CONSUMER THAT THE BARGE INDUSTRY RECOVER. HOWEVER, IF OUR INDUSTRY IS TO HAVE ANY HOPE OF ECONOMIC RECOVERY IT CANNOT WITHSTAND ADDITIONAL TAXATION. THE PROVISIONS OF S. 1739, AS IT IS NOW WRITTEN, WOULD SEVERELY INJURE AN INDUSTRY ALREADY ON ITS BACK.

RECOMMENDATIONS:

JUST OVER A YEAR AGO, AWO EMBARKED ON A COURSE TO PROVIDE A NEW VISION IN OUR INDUSTRY'S INTERACTION WITH THE CONGRESS. OUR ASPIRATION IS TO WORK WITH YOU AND YOUR COLLEAGUES IN A CONSTRUCTIVE RELATIONSHIP. NOT TO STONEWALL.

NOT TO BE NAYSAYERS. NOT TO RESIST CHANGE. BUT, WE HAVE NOT ALWAYS BEEN SUCCESSFUL, OFTEN FINDING OURSELVES DOING THE TANGO ALONE. WITH RESPECT TO S. 1739, FOR MANY MONTHS WE HAVE SOUGHT TO CHANGE THOSE SECTIONS WHICH ARE PATENTLY UNFAIR AND WOULD WOUND EVEN FURTHER ANY INDUSTRY VITAL TO AMERICA'S BUSINESS AND COMMERCE. SPEAKING TO THIS COMMITTEE'S JURISDICTION, AND IN SUMMARY, WE URGE:

(1) REMOVE THE AUTHORITY OF THE SECRETARY OF THE ARMY TO IMPOSE USER FEES;

(2) RESTORE THE PROHIBITION AGAINST ADMINISTRATIVE IMPOSITION OF OPERATING TOLLS AND CHARGES; AND

(3) REQUIRE THAT ONLY DIRECT BENEFICIARIES OF PORT IMPROVEMENT PROJECTS BE ASKED TO BEAR THE NON-FEDERAL SHARE OF IMPROVEMENT COSTS.

FINALLY, WE WISH TO ADVISE THIS COMMITTEE, AND ASK FOR ITS MEMBERS' SUPPORT, OF CERTAIN OTHER AMENDMENTS TO S. 1739 WHICH FALL OUTSIDE THE JURISDICTION OF THE COMMITTEE ON FINANCE. THESE AMENDMENTS ARE DESIGNED TO REFASHION THE BILL TO HARMONIZE IT SUFFICIENTLY WITH ITS DISSIMILAR COMPANION IN THE HOUSE OF REPRESENTATIVES, H.R. 3678, SO BOTH CAN BE MATED SUCCESSFULLY IN CONFERENCE.

WE PROPOSE:

(1) REMOVE THE INLAND WATERWAY FUEL TAX REVENUES FROM THE ANNUAL FEDERAL OBLIGATION CAP. CONGRESS INTENDED THESE FUNDS FOR CONSTRUCTION USE ONLY, NOT FOR OPERATION AND MAINTENANCE. AS A GESTURE OF OUR GOOD FAITH, WE WOULD SUPPORT LOWERING THE CAP BY $35 MILLION, THE AMOUNT WHICH WAS PAID INTO THE INLAND WATERWAYS TRUST FUND IN FY 83; AND

(2) ESTABLISH A NATIONAL INLAND WATERWAYS COMMISSION WHICH WOULD REPORT BACK TO CONGRESS WITHIN THREE YEARS WITH A SYSTEM PLAN, INCLUDING FINANCING REQUIREMENTS FOR THE WATERWAY SYSTEM. MEANWHILE, KEEP THE CAP IN PLACE AS AN INCENTIVE FOR THIS COMMISSION TO PERFORM ITS MISSION ON TIME.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, AGAIN, WE APPRECIATE THE OPPORTUNITY TO COMMENT. WE WOULD BE HAPPY TO WORK WITH YOU IN ANY WAY WE CAN AND TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

STATEMENT OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF AMERICAN-FLAG SHIP OPERATORS, WASHINGTON, DC

Senator PACKWOOD. Mr. May.

Mr. MAY. Mr. Chairman, I can only echo your remarks and I concur with everything that has been said previously at this panel. The Council of American-Flag Ship Operators represents the majority of the U.S.-flag liner companies, and they have a wide variety of ships which serve this country. I'm accompanied by Mr. Marc Fink who is the counsel for many of the members of CASO and also for many foreign operators serving our ports.

Our concern is with regard to section 1006. We echo the concerns of other witnesses that we can't pass through user fees. Our exporters can't bear anymore costs because as of the first quarter of this year, there was three times as much cargo that came into New York than went out, and the situation is just about the same in the Pacific. We can't increase exporters costs.

Our real concerns are that we should not be taxed for things we cannot use. We can't use more than 45 feet. Our ships are designed for that. And generally throughout the world liners are designed for that.

Second, we believe that the people who benefit from dredging and maintenance over 45 feet should pay for it. And that is really all the people of the United States.

Thank you, sir.

Senator PACKWOOD. Thank you.

[The prepared written statement of Mr. May follows:]

STATEMENT OF ALBERT E. MAY

EXECUTIVE VICE PRESIDENT

COUNCIL OF AMERICAN-FLAG SHIP OPERATORS

I AM ALBERT E. MAY, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL OF THE COUNCIL OF AMERICAN-FLAG SHIP OPERATORS (CASO). CASO REPRESENTS THE MAJORITY OF U.S.-FLAG LINER COMPANIES SERVING THE FOREIGN COMMERCE OF THE UNITED STATES. OUR MEMBER COMPANIES OWN AND OPERATE A MODERN AND DIVERSIFIED FLEET OF BREAK-BULK, BARGE-CARRYING, CONTAINER AND ROLL-ON ROLL-OFF VESSELS WHICH CARRY A WIDE RANGE OF GENERAL CARGOES. ALL OF THESE SHIPS ARE AVAILABLE UNDER VARIOUS PROGRAMS FOR USE BY THE UNITED STATES DURING TIMES OF MILITARY EMERGENCY. NONE OF THESE SHIPS REQUIRE A CHANNEL DEPTH OF MORE THAN FORTY-FIVE FEET. CASO MEMBERS AND, INDEED, ALL LINER OPERATORS SERVING THE PORTS OF THE UNITED STATES HAVE BEEN CONCERNED, DURING DISCUSSION OF S. 1739 AND OTHER "PORT DEVELOPMENT" BILLS, WITH THE SUBJECT OF WHETHER OR NOT FEES SHOULD BE ASSESSED ON VESSEL OPERATORS TO FINANCE DREDGING. FOR THE REASONS SET FORTH BELOW, WE HAVE STEADFASTLY MAINTAINED THEY SHOULD NOT.

WE ARE, THEREFORE, DISTURBED THAT TITLE X OF S. 1739 WOULD REQUIRE GENERAL CARGO HARBOR LOCALITIES, THAT IS THOSE WITH CHANNELS NOT EXCEEDING FORTY-FIVE FEET IN DEPTH, TO CONTRIBUTE 30% OF THE COST OF CHANNEL IMPROVEMENTS. TITLE X ALSO PROVIDES THAT DEEP-DRAFT HARBOR LOCALITIES, THAT IS THOSE WITH CHANNELS IN EXCESS OF FORTY-FIVE FEET, COMPLETELY FUND IMPROVEMENT PROJECTS OVER FORTY-FIVE FEET AND PAY 50% OF THE INCREMENTAL MAINTENANCE COSTS FOR THAT PORTION IN EXCESS OF FORTY-FIVE FEET. IN ORDER FOR LOCAL PORTS TO RECOVER THEIR SHARE OF CHANNEL IMPROVEMENT AND

MAINTENANCE COSTS, S. 1739 AUTHORIZES PORTS TO COLLECT USER FEES FROM VESSEL OPERATORS.

THE REPORT OF THE COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS ACCOMPANYING S. 1739 STATES THAT, GIVEN THE ROLE OF GENERAL CARGO HARBORS IN AMERICA'S FOREIGN AND DOMESTIC TRADE, THEIR ". . . FUNCTION IS ESSENTIAL TO NATIONAL COMMERCE." THE REPORT CONCLUDES ITS DISCUSSION OF GENERAL CARGO HARBORS BY STATING "CONSEQUENTLY, THE RETENTION OF SIGNIFICANT FEDERAL PARTICIPATION IS JUSTIFIED."

THE BENEFITS OUR WATER TRANSPORTATION SYSTEM BRINGS TO THE NATION ARE MULTIPLE AND INCLUDE SUCH THINGS AS INCREASED FOREIGN TRADE, EMPLOYMENT, CONTRIBUTION TO THE GROSS NATIONAL PRODUCT AND CONTRIBUTION TO OUR BALANCE OF PAYMENTS. TAKEN ON THE WHOLE, THE COMPANIES WHICH OWN AND OPERATE THE VESSELS ON WHICH U.S. GOODS ARE TRANSPORTED ARE A VERY SMALL PART OF THOSE WHO BENEFIT FROM OUR WATER TRANSPORTATION SYSTEM. WE CANNOT CONSIDER THE FEDERAL GOVERNMENT'S CONTRIBUTION TO THIS SYSTEM AS A SUBSIDY OR AN ENTITLEMENT. WE MUST CONSIDER IT AS THE CONTRIBUTION BY ALL OF THE PEOPLE FOR THE BENEFITS WHICH ALL RECEIVE.

WHILE IT IS UNDOUBTEDLY TRUE THAT THE DEEPENING OF CERTAIN CHANNELS AND HARBORS TO DEPTHS GREATER THAN FORTY-FIVE FEET MAY BE DESIRABLE OR EVEN NECESSARY (FOR EXAMPLE, TO FACILITATE THE EXPORT OF U.S. COAL) THE BURDEN OF SUPPORTING SUCH PROJECTS SHOULD NOT BE IMPOSED ON THOSE CARRIERS WHO NEITHER USE NOR REQUIRE DEPTHS GREATER THAN FORTY-FIVE FEET.

WE URGE THAT THIS COMMITTEE AMEND TITLE X OF S. 1739 TO ENSURE THAT LINER VESSELS CARRYING AMERICA'S FOREIGN AND DOMESTIC COMMERCE ARE NOT BURDENED WITH FEES FOR DEEP-DRAFT CHANNELS IN EXCESS OF FORTY-FIVE FEET WHICH THEY DO NOT REQUIRE.

YOU MAY HEAR THE ARGUMENT MADE THAT CARRIERS MAY SIMPLY "PASS THROUGH" THESE USER FEES IN THE FORM OF A SURCHARGE ON FREIGHT CHARGES TO SHIPPERS OR CONSIGNEES. THIS IS SIMPLY NOT POSSIBLE NOR, IF IT WERE, WOULD IT BE EQUITABLE.

THE COST OF DEVELOPING AND MAINTAINING DIFFERENT PORTS WILL VARY CONSIDERABLY. IF WE ASSUME THAT EACH CARRIER OR CONFERENCE OF CARRIERS WOULD AND COULD MAKE ITS OWN DECISION AS TO WHETHER OR NOT TO INVOKE A USER FEE BASED SURCHARGE AND IF SO, OF WHAT AMOUNT, THE FIRST DECISION TO BE MADE IS WHETHER OR NOT THE SURCHARGE SHOULD REFLECT THE ACTUAL CHARGE LEVIED AT EACH PORT. CONFERENCES HAVE TRADITIONALLY BEEN PROHIBITED BY THE FEDERAL MARITIME COMMISSION FROM ASSESSING DIFFERING CHARGES FOR INDIVIDUAL PORTS WITHIN THE SAME CONFERENCE RANGE. INDEPENDENT CARRIERS MAY DO SO. HOWEVER, THE INDEPENDENT CARRIERS COMPETING WITH CONFERENCE CARRIERS WILL BE AFFECTED BY WHAT THE CONFERENCE MAY DO AND VICE VERSA. UNDOUBTEDLY BOTH WOULD, IF THEY COULD IGNORE THE OTHER FORMS OF COMPETITION SUCH AS MINIBRIDGE, EITHER STRIKE AN AVERAGE, WHICH WOULD BE DIFFICULT BECAUSE PORT VOLUMES AND TONNAGE VARY SIGNIFICANTLY, OR SET THE CHARGE AT THE LEVEL OF THE LOWEST "USER FEE" PORT IN THE CONFERENCE RANGE. IF THIS WAS DONE, THE CARRIERS WOULD END UP ABSORBING THE DIFFERENCE BETWEEN LOW AND

HIGH USER FEE PORTS. IN ACTUAL PRACTICE A CARRIER'S ABILITY TO RECOVER USER FEES WOULD PROBABLY BE DICTATED BY "MINI-LANDBRIDGE" AND "MICRO BRIDGE" COMPETITION AT LOW COST, GATEWAY PORTS OR THROUGH CANADIAN OR MEXICAN PORTS.

HOWEVER, THE BASIC PROBLEM IS THAT IN MOST CASES THE CARRIER WILL NOT BE ABLE TO RECOVER PORT USER FEES. THE CARRIERS CANNOT CHARGE MORE THAN SHIPPERS CAN PAY. EXPORTERS FROM THE UNITED STATES GENERALLY CANNOT AFFORD TO PAY HIGHER SHIPPING CHARGES AND STILL REMAIN COMPETITIVE IN WORLD MARKETS. THE PROBLEM FACED BY U.S. EXPORTERS, WHO ARE OF COURSE OUR CUSTOMERS, IS NOT CAUSED PRIMARILY BY SHIPPING RATES WHICH ARE A RELATIVELY SMALL COMPONENT OF THE DELIVERED COST OF GOODS BUT BY A COMBINATION OF FACTORS INCLUDING FOREIGN DISCRIMINATIONS, LOW-COST FOREIGN LABOR, AND MOST PARTICULARLY TODAY THE STRENGTH OF THE DOLLAR. OUR EXPORTERS MARKETING OVERSEAS MUST COMPETE WITH PRODUCTS FROM EUROPE, JAPAN, AND OFTEN SUBSIDIZED INDUSTRIES IN THIRD WORLD COUNTRIES. ANY ADDITIONAL BURDEN WILL MAKE THEM LESS COMPETITIVE. THE NATURE OF THIS PROBLEM IS POINTED UP IN STARK TERMS BY AN ARTICLE WHICH APPEARED ON THE FRONT PAGE OF THE NEW YORK JOURNAL OF COMMERCE ON MONDAY, JUNE 4, 1984. THE ARTICLE STATED THAT DURING THE FIRST QUARTER OF THIS YEAR IMPORTS THROUGH THE PORT OF NEW YORK AND NEW JERSEY HAD INCREASED 32.4% TO A TOTAL OF 5,540,000 TONS WHILE EXPORTS HAD DROPPED 4.1% TO A TOTAL OF ONLY 1,500,000 TONS. NEW YORK IS BY NO MEANS UNIQUE FOR THERE IS A COMPRABLE INBALANCE BETWEEN EXPORTS AND IMPORTS IN OUR TRANSPACIFIC TRADES. IF ADDITIONAL BURDENS SUCH AS USER FEES ARE PLACED ON OUR EXPORTERS WE WILL ONLY EXASERBATE A SITUATION WHICH IS ALREADY PLACING IN JEOPARDY OUR MERCHANT MARINE, OUR NATIONAL SECURITY AND OUR ECONOMY.

For all of the above reasons we believe it is eminently reasonable and consistent with sound national policy that the Federal government not abandon its traditional role in constructing, operating and maintaining our general cargo navigation system. We strongly oppose those provisions of Title X of S. 1739 which would do otherwise.

With regard to amendment number 3137 ordered referred to this Committee by Sen. Abdnor and others on May 24th I can only say that it does nothing to allay our concerns. While it provides that the National Commission on Harbor Maintenance may determine that no cost recovery for port maintenance is appropriate, it goes on to say that if recovery is appropriate, advalorem fees may be considered. An advalorem fee system would be absolutely and totally unfair and disruptive. Sen. Abdnor's amendment also changes the section mandating that 80 percent of any fees imposed for the recovery of the non-Federal cost-share be imposed on vessels requiring the deeper harbor draft to a provision that fees shall be established only after a public hearing and shall reflect ". . . to a reasonable degree the benefits provided by the project to a particular class or type of vessel". We are not certain what this means. What we are certain of is that there should be no fee imposed on vessels not requiring deeper-harbor drafts. Interestingly, in Sen. Abdnor's remarks accompanying this amendment he states:

> "Fees which may be imposed by ports to recover their share of project costs may not be imposed on vessels engaged in intraport movements or vessels with design drafts of 14 feet or less. This is to clarify that barges are not to be assessed fees for deepening ports."

Why then assess fees against any vessels not requiring the deepening of ports?

Thank you.

STATEMENT OF MARC FINK, BILLIG, SHER & JONES, WASHINGTON, DC, ON BEHALF OF U.S. AND FOREIGN FLAG SHIP OPERATORS, WASHINGTON, DC

Senator **Packwood**. Are you going to make a statement, Mr. Fink?

Mr. **Fink**. Mr. Chairman, I just want to say we submitted a letter to Chairman Dole last Friday, which we would ask be made a part of the record. We did not provide any written testimony for this morning.

Senator **Packwood**. It will be made a part of the record.

[The letter from Mr. Fink follows:]

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June 1, 1984

By Hand

Honorable Robert Dole
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Re: S. 1739; Opposition to Port User Fees

Dear Mr. Chairman:

On behalf of a broad coalition of ocean common carriers, we ask the Finance Committee to amend section 1006 of S. 1739, as reported by the Committee on Environment and Public Works, when it marks up that bill next week. Specifically, we offer two amendments to section 1006 which, together, would provide that local governments may not impose fees on the vessels of liner carriers for the purpose of funding channel and harbor dredging (so-called port "user fees"). Adoption of these two amendments would accomplish the following: first, and most importantly, ensure that liner carriers are not required to pay for projects which they do not need and are of no benefit to them; and second, properly recognize the broad public benefits provided by general cargo harbors and the ocean common carrier vessels which serve them.

Also, we wish to make clear at the outset that we strongly oppose certain amendments to section 1006 recently proposed by several members of the Committee on Environment and Public Works and printed in the May 24 Congressional Record. Accordingly, we also take this opportunity to advise of our views on those May 24 amendments.

Background

The coalition of carriers represented herein -- Barber Blue Sea Line; Barber West Africa Line; Lykes Bros. Steamship Co., Inc.; A.P. Moller-Maersk Line; Nedlloyd Lines; The National Shipping Co. of Saudi Arabia; United Arab Shipping Co.; and Waterman Steamship Corp. -- collectively serve virtually all major U.S. ports and fly both U.S. and foreign flags. We believe that these carriers are representative of the entire class of ocean common carriers (usually referred to as "liner" carriers) serving U.S. foreign commerce and that their opposition to port user fees is representative of the views of the liner carrier industry on this issue. Indicative of this, Sea-Land Service, which will be submitting its own statement to the Committee, has authorized us to state that it also concurs with and joins in the views expressed in this letter.

It should be clearly understood that liner carriers play a vital role in the import and export commerce of this nation. By providing regularly scheduled service and accepting small as well as large cargoes, they provide virtually all of the export/import ocean carrier service utilized by small and medium sized businesses, as well as a great deal of the ocean service utilized even by the largest companies.

In addition, liner carriers generate very substantial employment and economic activity at ports. They have agents in ports; they own property in ports; and they extensively utilize the services of stevedores, longshoremen, and suppliers of commodities needed to operate ocean-going vessels with crew, such as fuel, food, and other supplies. Liner carriers thus contribute very substantially to the overall economic welfare of the port community.

Significantly, to provide the services which yield these benefits to our nation's commerce, liner carriers operate vessels (primarily containerships) which usually draw 30-35 feet of water and almost always draw 40 or less feet of water. To our knowledge, even the most modern and largest liner vessels on order do not require channels of more than 45 feet in depth. Moreover, there are an ample number of U.S. ports dredged to depths which accommodate modern liner vessels.

First Amendment: To Preclude Imposition Of User Fees On Liner Carriers To Finance Very Deep Draft Projects

Since liner vessels do not draw more than 45 feet of water, we believe it is clear that they should not, under any circumstances, have to pay fees to finance dredging to depths greater than 45 feet. Any other result would be simply unfair to liner carriers. Thus, if any port "user fee" system established by the Congress is to be worthy of the name, under that system large bulk commodity carriers' vessels -- the only ones in need of over 45 feet of draft -- should be the only class of vessels which could be asked to pay fees toward the cost of dredging channels to depths greater than 45 feet. Any statutory scheme which leaves open the possibility of vessels which draw less than 45 feet of water having to pay fees to support very deep draft (deeper than 45 feet) dredging is simply leaving the door open to the inequitable result of liner carrier vessels (and even many bulk vessels) subsidizing the cost of dredging which benefits only very deep draft bulk vessels.

To preclude the possibility of liner carriers having to pay for deep draft projects, we urge adoption of an amendment which would add a new section 1006(e) to S. 1739, as reported, to read as follows:

> (e) Any fees to recover the cost of construction and incremental maintenance of deep-draft harbors pursuant to section 1004 of this title shall not be imposed on vessels which do not require a channel with a depth of more than 45 feet.

In offering this amendment, we also note that this issue is partially, though not fully addressed by section 1006(b) of S. 1739, as reported, which, in effect, provides that at least 80% of the revenue obtained from any user fees imposed to finance the local share of the cost of a project would have to be obtained from vessels with drafts directly benefitting from the project. Thus, with respect to such a project (for example, deepening a harbor from 45 to 55 feet), at most 20% of any fees collected towards the local share of that deep draft project could be obtained from liner and other vessels drawing 45 feet or less of water.

We note that the May 24 amendments delete section 1006(b) from the bill, replacing it with a requirement in a proposed new section 1006(a) that fees "reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel." We are opposed to this revision because we believe it is intended to allow ports greater freedom to impose fees on vessels whether or not they use the deeper draft of the particular project which gave rise to the fees. Thus, under the May 24 proposal, liner carriers could be asked to pay more, perhaps much more, than 20% of the cost of deep draft dredging projects even though it is clear that 35 foot draft vessels simply do not use, and do not benefit from dredging projects to greater depths.

Thus, we ask the Finance Committee not only to adopt our proposed section 1006(e), but to retain section 1006(b) of S. 1739 as reported by the Committee on Environment and Public Works.

Second Amendment: To Preclude Imposition Of User Fees On Liner Vessels To Finance General Cargo Port Projects

The second of our two amendments would ensure that user fees could not be imposed on liner vessels to finance general cargo dredging projects. We believe that the benefits to the nation which result from channel and harbor dredging at ports (both improvement and maintenance dredging) to accommodate 45 foot and shallower draft vessels have proven so considerable, in terms of facilitating exports, imports, and job development, that it is fully appropriate to continue to fund general cargo dredging projects out of the general Federal Treasury (or in the alternative, other government revenues, Federal or local, not generated by user fees). We all understand that import and export goods carried by ship, no matter how quantified, have a major impact on our daily lives. Thus, because general cargo port activity and imports and exports are so tied to the economy of the nation as a whole (and this is the case now more than ever before) it is inappropriate to try to identify specific "users" of general cargo ports -- the Federal Government should therefore continue to finance 100% of the cost of general cargo dredging projects from the U.S. Treasury.

Such full Federal funding is supported by a very recent study prepared for the Department of Commerce (Bushnell, Pearsall, and Trozzo, Economic Effects of Levying A User Charge To Finance Harbor Maintenance, Summary Report, September 16, 1983). Indeed, this study has found that the imposition of port user fees could result in a net loss to the U.S. Treasury due to the depressing effect of user fees on overall economic activity in ports and other affected communities. This recent report thus indicates that user fees cannot be supported on a budgetary basis either.

Moreover, we note that, in determining to provide, in H.R. 3678 (the House counterpart to S. 1739), for 100% Federal funding of general cargo projects, the House Committee on Public Works and Transportation was clearly influenced by the fact that the entire population benefits from general cargo harbors and the vessels which serve them (H.R. Rep. No. 616, Part I, 98th Cong., 2d Sess. 5 (March 8, 1984)):

> ...the United States ports constitute an essential element of the Nation's transportation system, making possible the import and export of goods to the benefit of the entire population. The ports generate substantial revenues, including customs revenues as well as tax revenues, to the Federal Treasury. The benefits associated with ports are not port specific, nor are they specific to various regions of the country. For these reasons, the Committee has retained Federal involvement in the construction and maintenance of the general navigation features of general cargo ports, which are those ports having a depth of 45 feet or less.

We fully share these views, and believe that S. 1739 should clearly provide for 100% government funding, preferably 100% Federal government funding, of general cargo port projects.

As S. 1739 stands before the Finance Committee (and as proposed in the May 24 amendments), it does not provide for 100% Federal financing of general cargo projects but requires a 30% local share. While we would prefer 100% Federal financing, our greater concern is that S. 1739 be clarified to ensure that such 30% local share may not be recovered by port user fees imposed on vessels, so that the bill will reflect the general benefits to the economy of general cargo ports.

We believe -- though this may not be clear, and could well be the subject of litigation -- that section 1006(a) of S. 1739, as reported, limits the authority of local governments to impose port user fees so that such fees may not be assessed to recover the 30% local share of general cargo projects. In this regard, we note that the Senate Committee on Environment and Public Works stated as follows in its report on S. 1739: "The fees authorized by this section [section 1006] shall be used by the non-Federal interest only to pay its share of the costs of maintenance and improvements of deep draft channels and harbors of the United States as provided for in this Act." S. Rep. No. 340, 98th Cong., 1st Sess. 96-97 (Nov. 17, 1983) (emphasis supplied). Notwithstanding this legislative history, we believe that a clarifying amendment to section 1006(a) would be in order, to avoid litigation over whether user fees may be imposed to recover the local share of section 1003 (general cargo) projects.

Thus, we would amend section 1006(a) of S. 1739, as reported, by striking "construction, together with its costs for incremental maintenance work undertaken pursuant to section 1004 of this title" and inserting in lieu thereof: "construction undertaken pursuant to section 1004 of this title and incremental maintenance work undertaken pursuant to section 1004 of this title." This amendment, we believe, would make completely clear that section 1006 of S. 1739 would not authorize the imposition of fees on liner carriers (or other vessels) to finance general cargo projects (authorized under section 1003), but only deep draft projects (authorized under section 1004).

On this provision, we note that the May 24 amendment to section 1006(a) of S. 1739 would resolve any ambiguity in the opposite direction, and would authorize fees to be imposed to collect the 30% local share. Thus, in addition to supporting our own amendment on this issue, we oppose the May 24 proposed amendment to this provision.

However, before leaving this point we want to emphasize that our preference, in terms of structuring 100% governmental (0% user fee) financing of general cargo projects, is for 100% Federal financing of such projects. That, we believe, is the way to resolve this issue. Thus, we oppose S. 1739's requirement that local governments contribute 30% of the cost of general cargo projects and wish to make clear to the Congress and the port community that liner carriers would support an amendment to section 1003 of S. 1739 to strike that 30% local share requirement. As the Finance Committee's referral of S. 1739 apparently does not extend to consideration of section 1003, we are not suggesting that an amendment to section 1003 be adopted in the Finance Committee, but urge that such an amendment be pursued when the full Senate considers S. 1739.

Other Concerns

Before closing, we wish to make clear that, should the Congress, despite our recommendations, not adopt both of the amendments suggested above (adoption of both having the effect of precluding the imposition of user fees on liner vessels), there are other approaches to amending section 1006 of S. 1739 which would improve the bill from the liner viewpoint. Such other amendments could be advanced in conjunction with either of the two amendments we have recommended above.

For example, we would support an amendment which would preclude local authorities from imposing user fees based on the value of cargo. We consider such fees to be grossly unfair since the burden of any user fee based on the value of cargo would fall heavily and disproportionately on liner carriers. To illustrate, we estimate that liner cargo in the U.S.-European trades (such cargo consisting in large part of finished and semi-finished products) has an average value of $3,500-$4,000 per ton. In contrast, we understand the price of a ton of coal to be approximately $30. Thus, a port user fee based on cargo value would tax a liner carrier vessel over one hundred times as heavily as a bulk coal carrier on a per ton basis, even if the drafts of the liner vessel and the coal collier were identical.

In addition, as we have advised other Congressional Committees, we consider that if the Congress should, despite our objections, authorize localities to impose user fees on liner carriers, tight Federal restrictions on local administration of fees should accompany authorization to localities to impose the fees. Such restrictions could be imposed either by statute or by regulation and would be designed to ensure that paperwork, administrative, and recordkeeping requirements associated with fees would not vary greatly, if at all, from port to port. Without strong Federal supervision of such matters, differences in local port requirements would burden international ocean commerce.

Summary and Conclusion

Liner carriers strongly oppose authorization for the imposition of port user fees on vessels not requiring more than 45 feet of channel depth, whether for the purpose of financing deep draft or general cargo harbor dredging.

As to general cargo projects, liner vessels provide such broad benefits to the nation's commerce that they should not be required to pay fees to support dredging of general cargo ports. We thus urge the Finance Committee to adopt our suggested amendment to section 1006(a) of S. 1739, as reported, to ensure that the bill provides this result. Related to this, we have also made clear our opposition to the requirement of section 1003 of S. 1739, as reported, that local governments 30% finance general cargo projects.

More importantly, we believe that S. 1739 should preclude fees from being imposed on liner carriers to support dredging to depths (greater than 45 feet) not used by liner carrier vessels. S. 1739 does not presently preclude that out and out unfair result, which would make a mockery of the phrase "user fee." Thus, we urge the Finance Committee to adopt our proposed new subsection 1006(e).

Also of great importance, consistent with our proposed amendments to S. 1739, as reported, the Finance Committee should not adopt, in its consideration of section 1006, the amendment to section 1006(a) or the deletion of section 1006(b) proposed on May 24.

As we attach great importance to these issues, we ask that this letter be included in the record of the hearing on S. 1739 which we understand will be held by the Finance Committee's Subcommittee on Taxation and Debt Management on June 5, 1984.

Finally, we thank you for your consideration of our views; if the Committee or any Members or Staff have any questions or comments on these views, we would be pleased to discuss them.

Sincerely,

Marc J. Fink

Marc J. Fink

John A DeVierno

John A. DeVierno

cc: All Members of the
Committee on Finance

MJF/JAD:smh
030-04-01

Note: Several of the carriers represented herein are foreign-based concerns; Billig, Sher & Jones, P.C. has registered with the Department of Justice pursuant to the Foreign Agents Registration Act with respect to its representation of those concerns.

Mr. FINK. I would just like to make one small point. And it is with respect to some testimony that was presented earlier this afternoon.

The administration apparently takes the position that the provision in 1006(b), which now requires that 80 percent of user fees for deep draft construction be recovered from the people who actually would benefit or use that project, be deleted. Liner carriers simply cannot understand that position because if, indeed, this is to be a user fee system where the user is to pay for it, we believe that type of benefit provision should not be deleted.

Liner carriers are vehemently opposed to any system whereby they would have to pay for projects beyond 45 feet since they do not use them. And I think that's been the position of all the people here today.

Thank you.

STATEMENT OF GEORGE R. FRENCH, JR., VICE PRESIDENT, DISTRIBUTION, ATLANTIC CEMENT CO., STAMFORD, CT, ON BEHALF OF NATIONAL WATERWAYS CONFERENCE, INC., WASHINGTON, DC

Senator PACKWOOD. Mr. French.

Mr. FRENCH. Thank you, Senator. I'm George R. French, Jr., vice president for distribution of the Atlantic Cement Co., Stamford, CT.

And I'm appearing here as vice chairman of the National Waterways Conference, Inc.

The National Waterways Conference is committed to the enactment this year of omnibus legislation authorizing new waterway, port, flood control and other water resources construction projects, provided certain user charge policy aspects can be amended to make the measure more palatable.

It has been 14 years since the enactment of comprehensive construction authorizations, and 8 years since the passage of any omnibus bill at all, one which primarily authorized new project studies, but very little actual construction.

The Nation can ill afford further delay, and both S. 1739 and similar legislation pending in the House would get us back on the track by authorizing major programs of port, inland navigation and water resources improvements. At the same time, this legislation must not contain cost-sharing or cost-recovery provisions which would stifle the economic sectors which these new projects are intended to benefit.

We realize that the Finance Committee's purview of S. 1739 is limited to the revenue-generating aspects of this legislation. We believe, however, that the revenue provisions of title V are in great need of improvement if the bill is to help fashion a first class navigation system, promote strong inland waterway industries, and win the support of a broad base of waterway users.

We are particularly disturbed by section 502. Section 502 would empower the Secretary of the Army "to impose, collect or obligate use charges on the commercial users of the inland waterways and harbors of the United States to the degree necessary" to fund the navigation program which he deems to be warranted.

A loosely defined inland waterway users board is established in section 503, but its recommendations as to actual spending levels would be purely advisory. Congressional review would also be absent. Because the contemplated user charges are vaguely defined and the Secretary's authority is practically unrestrained, it is unlikely that many of the charges he would impose would be related to a specific Government-rendered service. Nearly every type of user charge which has been proposed in recent years—river segment charges, tonnage duties, ton-mile taxes, horsepower based towboat licenses, capacity-based barge licenses, congestion tolls, fuel levies, etc.—is a generalized revenue-raising measure in the nature of a tax and bears no direct relationship between the taxpayer's payment and the services he receives. Only a lockage fee has this direct relationship. And section 502 does not limit the Secretary to imposition of lockage fees.

He can, in effect, levy revenue-raising measures which are really taxes. The existing shallow-draft waterway fuel tax was enacted in the Inland Waterways Revenue Act of 1978, which was reported by this committee and the tax-writing committee in the other body.

The fuel tax is a revenue measure which was instituted in the proper manner. That is, by congressional enactment.

We urge the Finance Committee to propose amendments to section 502 which would strip the Secretary of the Army of this taxing authority and relegate his recommendations concerning user taxes to just that—recommendations. They should be thoroughly aired before the revenue committees of the Senate and the House, and the final authority to impose new taxes should rest where it always has—with the Congress.

In amending section 502, we would also urge that your committee reinsert a key phrase which would be stricken from the United States Code by section 504 of S. 1739. Federal law has, at least for the last century—

Senator PACKWOOD. I'm going to have to ask you to boil down and conclude, if you can, Mr. French.

Mr. FRENCH. Thank you, Senator. As I said at the outset, the National Waterways Conference believes that the time is right for Congress to resolve the policy differences which have stalled the navigation and water resources program in recent years. We need new projects. But new taxes which damage the economic viability of inland navigation must not become the condition upon which modernization of the waterway system rests.

Thank you, Senator.

Senator PACKWOOD. Thank you.

[The prepared statement of Mr. French follows:]

STATEMENT OF GEORGE R. FRENCH, JR.
VICE CHAIRMAN, NATIONAL WATERWAYS CONFERENCE, INC.
BEFORE THE COMMITTEE ON FINANCE, UNITED STATES SENATE
WASHINGTON, D.C.

June 5, 1984

I am George R. French, Jr., of Stamford, Connecticut. I am Vice President-Distribution of the Atlantic Cement Company, and I serve as Vice Chairman of the National Waterways Conference, Inc. The Conference is a nationwide association of waterway users and beneficiaries in both the public and private sectors. Formed in 1960, the National Waterways Conference consists of some 500 member companies, organizations, or state and local governmental agencies joined together to promote sound and far-sighted national waterways policies — policies which are conducive to enlightened water resources management programs and to the provision of an efficient, first-class navigation system without repressive cost-sharing or cost-recovery requirements.

We appreciate this opportunity to share with the members of the Senate Finance Committee our views on Title V (inland navigation) of S. 1739, the "Water Resources Development Act of 1983." We have appeared on several occasions before the Water Resources Subcommittee of the Environment and Public Works Committee both during development of this legislation and at "oversight" hearings conducted after the bill was reported to the Senate floor.

We commend the Finance Committee for its review of the revenue-generating aspects of this measure, and we urge your committee to delete the most onerous provisions of this legislation and substitute language which will serve to generate additional support for the entire bill and thus increase the likelihood of its passage during the 98th Congress. I emphasize the latter statement, because I want to make it clear that we believe that the enactment of omnibus authorization legislation is long overdue. We certainly want to see a resolution this year of the policy differences which have, for many years, prevented the passage of such a measure.

As you may know, similar legislation (H.R. 3678) is before the House. Both the House and Senate bills would authorize badly needed replacements or enlargements of bottleneck locks on the inland waterway system, as well as major port modernizations and a number of other river, harbor, flood control and water resources improvements. It has been 14 years since the enactment of comprehensive construction authorization legislation and eight years since passage of any omnibus authorization bills and the Nation can ill afford further delay.

Congress Should Retain The Power to Tax

We are greatly troubled by Sec. 502 of Title V of the bill, which is before this committee, and certain related problems. Sec. 502 becomes operative if the Secretary of the Army, in his discretion, determines that the annual obligation of Federal funds for inland navigation construction, operation and maintenance, as specified in Sec. 501, is inadequate. In that event, the Secretary is authorized "to impose, collect or obligate use charges on the commerical users of the inland waterways and harbors of the United States to the degree necessary" to fund the inland navigation program which he deems to be wise and prudent.

Sec. 502, in effect, empowers the Secretary of the Army to set the level of inland navigation expenditures each year and, if this level exceeds the Federal obligations, to then impose whatever user charges he so desires. A loosely defined Inland Waterway Users Board is established in Sec. 503, but its recommendations as to annual spending levels would be purely advisory. The Secretary would not have to follow its advice nor would he have to obtain Congressional approval to impose user fees. Sec. 502 allows the Secretary of the Army to set Federal user charges policy, and he is handed a blank check.

Because the contemplated user charges are only vaguely defined and also because the Secretary's authority is practically unrestrained, it is highly unlikely that any user charge he might impose would be directly related to the specific provision of a government service. Nearly every type of user charge which has been proposed in recent years — river segment charges, tonnage duties, ton-mile fees, towboat licenses based on horsepower, barge licenses based on capacity, congestion tolls, fuel levies, etc. — is a generalized revenue-raising measure in the nature of a tax and bears no direct relationship between the taxpayer's payment and the service he receives. Only a lockage fee has this direct relationship, and Sec. 502 does not limit the Secretary to imposition of lockage fees. He can, in effect, levy revenue-raising measures which are really taxes.

It should be noted that the existing shallow-draft waterway fuel tax was enacted in the Inland Waterways Revenue Act of 1978 (Public Law 95-502) which was reported by this committee and the tax-writing committee in the other body. The fuel tax is a revenue measure which was instituted in the proper manner — that is, by Congressional enactment. For the Congress to delegate to a Cabinet official the power to administratively levy additional or similar revenue-raising measures, as Sec. 502 would provide, is a disturbing — if not unconstitutional — proposal.

If Congress wishes to impose a "ceiling" upon annual expenditures for inland navigation, for budgetary or other reasons, we feel that the Secretary of the Army's role should merely be to recommend, not to impose, any new taxes which he may deem advisable to generate funds in addition to the legislated ceiling. Should an industry advisory board be created, it should report to the appropriate committees of Congress — the public works committees regarding the construction and maintenance program and the Senate Finance and House Ways and Means Committees regarding any proposed user taxes.

Considerations Governing User Charge Increases

As you know, the first tax imposed upon commercial traffic on the inland waterways was the graduated fuel tax contained in Public Law 95-502. It was designed to gradually increase in 2¢-per-gallon increments until reaching 10¢ per gallon in October 1985. Although this new tax has neither reached the ceiling specified in the law nor been fully absorbed by waterway users, there has been pressure in recent years to substantially increase it.

We believe that Congressional consideration of changes or additions to the existing waterway tax should be guided by an understanding of the important role which waterways play in basic agricultural and industrial productivity and a current knowledge of the depressed economic conditions faced by many waterways industries. In 1980, shallow-draft waterways accounted for slightly more than 13 percent of the total ton-miles of U.S. intercity freight. Barges are particularly suited to movement of bulk cargoes such as raw materials; coal, petroleum and other energy products; liquid and dry bulk chemicals; iron and steel; wood and paper products; heavy equipment; cement and other building materials, and farm commodities and supplies.

While there may be signs of a general economic recovery on the horizon, I can report to you that America's basic "smokestack" industries — those which are the predominant users of waterway transportation — are far from rebounding. Industrial traffic has been declining since 1980, and as much as one-fourth to one-third of the shallow-draft barge fleet is reported to be idle. So much excess capacity and so little traffic has caused barge rates to hit rock-bottom, pushing scores of operators into the red. Construction of river equipment has faltered, with layoffs affecting as much as 75 percent of the work face at inland shipyards.

Similarly, America's grain producers face very uncertain times. They possess only a limited ability to pass through increased production or transportation costs, such as higher user taxes. They trade in world markets and generally must sell at the prevailing world price or not at all. Markets for coal and petroleum, which usually move in substantial quantities by barge, also remain soft.

In short, domestic waterway carriers, and a lot of their major shippers, are too concerned with their survival in the current economic climate to be able to ponder long-term capacity constraints facing the waterways system — much less entertain the possibility of assuming an increased financial role in the system's modernization and upkeep, at least anytime within the next year or so.

While S. 1739, in its current form, offers some recognition of waterway users' plight by triggering increased user fees only if expenditures exceed a certain level, the legislation could nevertheless result in immediate and substantial increases, depending upon the Secretary of the Army's exercise of the discretion which Sec. 502 would grant to him.

In fact, prompt construction of the major inland navigation projects awaiting authorization could result in a quadrupling of the current fuel tax by the late 1980's, under the legislation as reported out of the Environment and Public Works Committee. There is no evidence at hand — indeed, most trends point in the opposite direction — that waterborne commerce will rebound within the next few years at a rate sufficient to absorb such high-level tax increases.

The effects of user tax increases, at this time, on waterways traffic could be dramatic: interior origins for various barge-transported products would be abandoned in many instances for cheaper coastal or foreign sources; U.S. farm products, coal, etc., could lose vital overseas markets; and disinvestment could begin to occur at industrial sites along the inland river valleys. If so, this could substantially reduce the volume of waterborne commerce, leaving new navigation projects largely unused and impeding economic recovery prospects. Hopefully, such a quandary can be avoided through the adoption of several modifying amendments which we propose.

Sec. 504 Must Change in Tandem with Sec. 502

If the Finance Committee moves to amend Sec. 502 to reduce the Secretary of the Army's power to levy user taxes — retaining within Congress the power to tax — then certain technical changes to Sec. 504 are also in order. Austensibly, Sec. 504 is designed to amend Section 5 of Title 33 of the U.S. Code so as to authorize the Secretary of the Army to reconstruct or replace navigation projects under certain circumstances. The Secretary's authority to take such actions in emergencies became a subject of litigation in the replacement of Locks and Dam 26.

However, Sec. 504 of S. 1739 goes further than simply clarifying the Secretary's authority in such cases. It also strikes from Title 33 of the Code the following provision:

> "No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredge, or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation, now belonging to the United States or that may be hereafter acquired or constructed ***."

This 52-word prohibition on the collection of tolls was a part of the Rivers and Harbors Appropriation Act of 1884, and has been retained in the law, in one form or another, ever since. Its repeal would enable the Department of the Army or other Federal agency to begin imposing waterway user charges, irrespective of Federal funding "caps" or other provisions of S. 1739. In fact, Federal agencies could be compelled to do just that under the Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140). This act directs Federal agencies to implement user fees to recover the costs of their services except where there are "existing statutes prohibiting" such user fee collections.

If S. 1739 were to pass with Sec. 504 intact, the statutory prohibition on administrative imposition of waterway tolls would be dissolved, and the 1952 law would apply to shallow-draft, deep-draft and Great Lakes navigation programs. Once again, we believe the key issue is the Congress' taxing authority, and that the delegation of this power to the Executive branch should be avoided. We would urge, therefore, that the Finance Committee in amending Sec. 502 retain the first 52 words of Section 5 of Title 33 of the U.S. Code in order to make absolutely certain that Congress keeps jurisdiction over waterway user charges policy.

Other Amendments Are Also Needed

In addition to these proposed changes, which we believe clearly fall within the Finance Committee's purview, we have suggested other amendments to the Committee on Environment and Public Works which we feel would greatly strengthen

Title V of S. 1739. One would reduce the duration of the proposed cap on waterway expenditures from 13 years to no more than four years.

During this four-year period, we would recommend that a government-industry commission formulate and submit to Congress a long-range plan for the development, maintenance, and funding of the inland waterways system. This plan, in the form of a legislative recommendation, would be submitted to the appropriate committees of Congress, including this one — particularly if additional user fees or other forms of revenue are recommended by the commission.

We have also recommended that the proposed "cap" on navigation obligations contained in Title V apply to general revenue funds only, and that Inland Waterway Trust Fund revenues accruing from the bargeline fuel tax remain an independent fund devoted solely to construction of new projects.

We expect amendments embodying these changes to be offered when the bill is considered on the Senate floor, and we ask the support of members of the Finance Committee. The proposed changes which we have discussed here today are aimed at producing the strongest possible waterways authorization bill in the Senate. As I said at the outset, it is our hope that Congress will enact long-overdue omnibus legislation this year.

The Nation Needs a Strong System of Inland Waterways

While there is clearly a trend toward increased user participation in the provision of certain government services, including transportation, the American waterways system represents a special case. Change must proceed cautiously. The navigable waterways are part of a multiple-purpose water resources management program whose value to the Nation as a whole has led a succession of Congresses and Presidents to support the investment of Federal dollars in construction and upkeep. The transportation benefits of inland waterways have been, and are, integral to our ability to mobilize resources and industrial output in times of national emergency; to our agricultural and economic productivity in peacetime; to large-scale participation in world trade, particularly with respect to agricultural products; and to the vitality of interior regions where, save for the waterways, competitive transportation services are often lacking.

Historically, the Federal government has provided locks and dams, channel improvements and maintenance of the inland rivers -- improvements to the "rights-of-way" over which barges travel. Many private carriers — in fact, about 1,800 separate companies at latest count — compete intensely for commercial cargoes over this public transportation artery, with the result that rates are highly competitive and the benefits of the government-provided improvements are passed along to shippers. The real beneficiaries are the miner, the industrial mill worker, the farmer, and the consumer of goods which are transported by barge — a very broad segment of the populace.

Moreover, transportation savings are frequently enjoyed by shippers and receivers of goods which move by rail as well as barge, since waterways rates tend to establish the rate "floor" for much of the freight transportation sector. Indeed, this competitive effect even occurs over some rail routings many miles removed from the river's edge. Thus, farms, factories and mills located 100 miles or more from navigable waterways often benefit from reduced "water-competitive" overland freight rates.

We submit that the public importance of waterway transportation is not diminished by the current size of Federal deficits, for which recent years of declining waterway appropriations are hardly responsible. Rather, the stalled economy — which the deficit reflects — requires a competitive, productive, affordable transportation system more than ever!

Fairness in Times of Massive Federal Deficits

The Corps of Engineers' budget for port and waterway construction, operation and maintenance has been steadily declining in recent years while other areas of discretionary and non-discretionary Federal spending — together with changes in the general tax structure — have fueled the rising deficits. The recession has also played a major role.

In constant 1984 dollars, the Corps of Engineers' civil works program has declined from about $4 billion to about $2.6 billion in annual outlays between 1968 and 1983. Within that program, expenditures for construction fell from $2.9 million in 1968 to $1.2 billion in 1983. At the same time that waterway expenditures have been declining, waterway users have been paying a steadily increasing user tax which began at 4¢ per gallon on diesel fuel in 1980, is now at 8¢ per gallon, and, under the existing statute, will rise to 10¢ in 1985. In other words, navigation taxes increased by 33 percent last year and will escalate by another 25 percent next year!

Few other Federal activities have simultaneously experienced a decline in expenditures and an increase in Federal taxation of the program's clients. Nevertheless, waterway users would like to be able to do even more to help the Nation, and the inland waterway program, through these difficult fiscal times. We are willing to shoulder a fair share of the burden, but our most immediate concern is to assure the viability and improved health of basic industrial and agricultural shippers, as well as the carrier industry, all of which have been seriously crippled by the recession. Waterway users simply cannot afford increased operating costs, such as a new layer of user charges, at the present time.

In the future, a larger user role may be in order. Nevertheless, the national interest justifies a significant continued Federal role in the navigation program, irrespective of any temporary conditions of fiscal health which may apply now or later to waterway carriers and/or shippers. That Federal role is, and always has been, part of a three-way partnership involving the Federal contribution, state and local initiative, and private industry investment.

Federal assistance to inland navigation has been merely "seed money" yielding a boutiful return for the Nation. It has been matched by substantial contributions by non-Federal entities and by huge infusions of private capital in the form of plant sitings, industrial expansion, riverside terminals, elevators, various cargo handling and warehousing facilities, and so forth.

The Federal government has spawned much larger non-Federal contributions to the partnership — producing jobs, incomes, and tax revenues to the U.S. Treasury perhaps exceeding the original expenditure. In addition to the "transportation savings" benefits counted by the Corps of Engineers in its restricted project benefit-cost analyses, the general public has benefitted even more directly as a result of the economic growth, and hence Federal revenues, which have flowed forward from this three-way partnership.

Non-Federal interests have a vital stake in the inland navigation program and do not, in our judgment, wish to shirk their fair share of the responsibility for such programs. However, precipitous new taxes damaging to the economic viability of inland navigation must not become the condition upon which the modernization of the waterways system rests. It is equally important, in our view, that decisions as to the level and form of user taxation which may be necessary to help offset the cost of navigation improvements must continue to rest with the Congress and its revenue committees rather than be delegated to an Executive agency.

Senator PACKWOOD. Mr. Van Dyck, let me ask you a question. You said that we have reached the stage where all these fees cannot necessarily be passed along. But if the fees are high enough, you have no choice, do you? You are going to go bankrupt or you will try to pass them along.

Mr. VAN DYCK. Oh, there is no question we would have to attempt to pass them along, but I think that our experience in the marketplace is that with other modes that we compete against and so forth that while you might pass a small percentage along successfully, market shares dwindle pretty fast.

Senator PACKWOOD. Let me ask you. I'm thinking about my Columbia River system where the two methods of transportation for bulk are rail or barge. What happens to railway fees if you pass them along?

Mr. VAN DYCK. You are asking the wrong person because I have pretty strong opinions about that so my answer wouldn't necessarily be fair. But in our experience, the rail rates just ratchet up to just under what they consider to be the market rate so they get all the business and yet they widen the margin.

Senator PACKWOOD. That's exactly it. They don't come up quite to where you are, but if you have to raise your fees 20 percent, they are going to raise theirs accordingly, whether or not we have imposed any additional fees on them.

Mr. VAN DYCK. Yes, sir, we would agree with that position.

Senator PACKWOOD. Jack?

Senator DANFORTH. Mr. Farrell, you state in your testimony "our industry, which forms a vital part of the nation's transportation system, is in a depression, and is not recovering." Could you expand on that statement? And also describe the causes of the depression in your industry, and focus particularly on what role, if any, government policy, Federal Government policy, has played in that depression?

Finally, would you please describe the effect of increases in user fees on the health of the waterway system at this time.

Mr. FARRELL. Yes, Senator. In my testimony I included some data related to an Arthur Andersen study, which I believe earlier on you cited a part of that data.

In essence, it showed that in 1980 15 of the largest inland barge lines in the United States earned about $130 million of profit on about $1.1 billion of revenues. In 1982, those same 15 companies, the revenues had shrunk to about $850 million and instead of in a profit position, they aggregated a $30 million loss, of which $11 million they paid in user fees. In 1983, the losses were well in excess of $40 million. And as was indicated earlier, one of those companies lost $24 million.

I also cited with direct quotes from those annual reports that are available from publicly owned companies. And in every single case where we were able to get an annual report which referred to the barge companies, there was nothing but dismal news.

What caused the depression? Well, in a very real sense, what is good for the United States—that is energy conservation—has affected adversely the barge industry in hauling coal, one of our major commodities.

The worldwide demand for coal due to the strength of the dollar and due to the fact that the European and Japanese economies have not recovered at the same rate ours have, and other considerations, has also depressed the barge industry in the sense that we haul a lot of coal for export. Coal exports are depressed.

You eloquently spoke to the problems in the agricultural sector—grain exports. I would only add one other thing. There is an excess of capacity in equipment, on the order of 30 percent. This is a result largely—not completely—but largely of government tax policy which promoted investors investing in barge equipment in order to shelter income.

It is also true, to keep the record completely balanced, that the barge industry executives in the mid and late 1970's were looking toward an ever increasing export situation. And on that basis, invested in additional equipment themselves.

What would an increase in user tax do to the barge industry? Well, that's very simple. If you increase the cost of doing business in a business that's flat on its back and it is going to stay flat, now with a boot on its neck, however.

Senator DANFORTH. Thank you.

Senator PACKWOOD. Gentlemen, thank you very much.

Senator PACKWOOD. Now we go to a shipper panel: Earl Pryor, the president of the National Association of Wheat Growers; J. Stephen Lucas from Louis Dreyfus Corp.; George Berg of the National Affairs Division of the American Farm Bureau Federation; and R.

Thomas Van Arsdall, agricultural inputs and services from the National Council of Farmer Cooperatives.

STATEMENT OF EARL PRYOR, PRESIDENT, NATIONAL ASSOCIATION OF WHEAT GROWERS, WASHINGTON, DC

Senator PACKWOOD. How are you, Earl? I might say I have known Earl Pryor for years. I think he's a wheat farmer, as best I can tell. But on most occasions now I see him at something other than the direct business of planting or harvesting wheat. He testified last week on the subject of domestic content laws in Portland. He is now here to testify on this subject. And I assume from about mid-July onward you have got to be back in Condon, attempting to harvest your wheat.

Go right ahead.

Mr. PRYOR. Thank you, Mr. Chairman.

In the essence of time, I will summarize the statement that you have before you.

Basically, we would like to see this bill moved for the reason that there are projects in it that we think are timely and worthwhile. The question is how to structure it so that it is feasible.

Second, we would like to see the Secretary of the Army deleted from the authority of being the judge, jury and tax collector. We don't think that that's appropriate. Taxation is the purview of the Congress, and it should not abdicate that role.

We would like to see the waterway users commission initiated to give those people who are footing the bill some say on where the funds are being expended.

We are concerned about the fact of equity, not only between the modes of transportation, but among the users. A ton mile basis of tax would be particularly onerous to agriculture because of the long distances that are involved in the transportation links to the agricultural sectors.

We would like to see some way to define what our costs are going to be out there. We have seen figures based on 1982 production and the escalation of fees that would be needed in 1990 would relate to about 2.4 billion to 3.4 billion in costs for agriculture.

The barge companies are not the only ones that are in poor financial straits. Agriculture is in the same position, and, basically, for the same actions that have been implemented by the Government. So we are in the same boat, the same barge, so to speak.

In closing, I think because of these reasons, this action is very poorly timed. Some way there has got to be a better solution of how those costs are going to be assessed and when.

Thank you.

Senator PACKWOOD. Thank you.

[The prepared written statement of Mr. Pryor follows:]

Statement of Earl Pryor
Before the Senate Finance Committee
on
The Water Resource Development Act
June 5, 1984

Mr. Chairman and Members of the Committee:

I want to thank you for the opportunity to appear before you today to discuss the imposition of taxes upon users of the inland waterways and ports and harbors of this nation.

I am Earl Pryor, president of the National Association of Wheat Growers and a wheat producer from Condon, Oregon. Our grower organization commends each member of this Committee for your hard work and dedication to improving all facets of water transportation and for your support for the authorization of critically needed projects.

Agriculture has a large stake in the health and viability of the nation's waterways and ports. Of the 120 million tons of corn, wheat, and soybeans exported in 1982, close to half of these exports moved to ocean ports via the inland waterway system. This translates into approximately 69 billion ton-miles, or 30 percent of all ton-miles moved on the inland system.

The states represented by members of this Committee exported over $4 billion in wheat and wheat products alone in 1982. This represents more than half of all wheat exports for that year. And while grain was being barged downstream at a direct cost to the producer, barges carrying fertilizer and other inputs were moving upriver. In other words, producers pay any user fee or tax on shipments moving in both directions.

I point these figures out to show that any further tax upon the users of the inland system will affect the financial health of farmers, as well as others along the grain marketing chain. If less grain is shipped, or moved to other modes, economic dislocation will take place not only in the barge industry, but at points along the river and at export points as well.

Recent action around the Port of New Orleans is an example. The lower Mississippi River is the site of 11 export grain elevators, which move about one-half of all grain exports. According to the U.S. Department of Agriculture, the port has reported the closing of its public grain elevator on May 1 until October of this year.

This five-month closing is accompanied by other elevators reducing their work week, employees, or both. It should be pointed out that exports from the port were 2.2 billion tons in 1983, down from 2.3 billion in 1982.

Please do not assume that the NAWG does not wish to see S. 1739 move forward. Many of the provisions contained in the legislation as reported by the Senate Environment and Public Works Committee need be enacted. Members of that Committee have worked diligently and recognize that there are critical projects on each of the nation's major river systems which must go forward. This need was also shown by the full Senate in recent action on funding projects at the Columbia and Gallipolis locks.

However, Sections 502 and 1006 of S. 1739 cause wheat producers a great deal of concern. Section 501 states that the Secretary of the Army "is authorized to impose, collect, and obligate use changes on the commercial users of the inland water ways and harbors of the United States..." Such broad taxing authority provided to a Secretary sets a precedent which we as growers do not find comforting. The legislation does not provide the Secretary with guidlines on the maximum that could be charged to shippers, nor does it establish a particular mechanism for collecting the tax.

Past proposals from the administration for cost recovery are many and varied. They have called for a system-wide ton mile tax; they have called for a segment specific ton-mile fee; they called for a lockage or congestion fee; and an increase in the current diesel fuel tax paid by those using the system.

The question becomes which of these, or in what combination, will the Secretary of the Army choose and at what level? Certain tax measures will eliminate the agricultural traffic on a river segment, while the level of any particular tax can curtail the barge shipment of grain, or halt it all together.

For example, a one cent increase in the current diesel fuel tax will mean that farmers' income will be reduced by seven-tenths of a penny for every bushel shipped. This is not an insignificant amount considering the competitive nature and financial health of the agricultural industry.

Uncertainty is the enemy of commerce. Farmers, barge operators, and other users of the inland system need to know what future taxes they face, and at what level they will be imposed. S. 1739 fails in that regard. The NAWG strongly urges that this Committee remove the authority of the Secretary of the Army to impose and collect additional taxes on the users of the inland waterway system.

Rather than move forward hastily, it is advisable to follow the procedure outlined in Title X of S. 1739. Section 1001 creates a National Commission on Harbor Maintenance to study and recommend to Congress methods to fund harbor maintenance costs. A similar provision should be included in Title V for the inland system.

An Inland Waterway Commission is not a means by which the system will be left to languish in its current state. This commission should be forced to report to Congress on a certain date, with recommendations for funding the non-federal share of operating and maintenance costs.

The National Association of Wheat Growers believes that those who use and pay for the improvement and construction of the waterways of this nation should have a strong voice in advising how funds will be generated and spent. With 60 percent of our wheat exports moving into foreign commerce, the export market, and anything which affects that market, is of vital interest to producers. We strongly urge the members of this committee to review the commission established in Title X, and provide a similar vehicle for the inland waterways.

Although the commission should be forced to have recommendations available to Congress on a date certain, you may wish the commission to remain viable for further review of revenue adjustments, improved efficiency, and overall health of the waterways. It is also recommended that this commission report to the Senate Finance and Environment and Public Works Committees as well as their counterparts in the House.

Prior to the commission reporting back to Congress, funding for the system should remain at current levels. However, the current trust fund revenues collected from the diesel tax should be formally designated as a commercial user tax for operation and maintenance of the system.

As currently written, S. 1739 would also permit the imposition of fees upon general cargo vessels for the purpose of providing deep draft harbors. Section 1006 would be enforced even if the vessel does not need a depth beyond the 45-foot level established in the legislation. The NAWG feels that those vessels which directly benefit from the deepening of harbors should pay the costs of those projects.

This fact has been recognized in principal by several members. An amendment to S. 1739 will be offered on the floor which would exempt vessels from payment if they draw 14 feet or less. It does not appear reasonable to have vessels drawing more than 14 feet but less than 45 feet pay a portion of the costs for those vessels which require deeper channels.

Given the fact that vessels which carry grain are generally 25,000 to 35,000 dwt with a depth of 28 to 35 feet, shipments of grain would be paying for a portion of the needs of other exports. Thus farmers would be paying twice - once to get their grain downriver as well as inputs upriver. And, at the same time they would be paying for deep draft harbors which they do not need.

The NAWG urges the members of this Committee to prohibit ports from forcing non-beneficiaries to pay a portion of the cost of constructing a deep-draft harbor.

In summary, wheat growers commend this Committee for its work in promoting a strong and viable inland, port, and harbor system. We would hope that the Finance Committee refines S. 1739 to take into account the problems faced by the agricultural industry and the related domestic and export earnings provided by the industry by incorporating the following concepts:

1. New taxes on inland waterways should be subjected to Congressional approval.
2. Taxes should be scheduled so producers and barge operators would know far in advance of any changes.
3. Agriculture should have a strong voice in any waterway commission which is established.
4. Vessels of less than 45-foot draft should not be forced to incur any cost associated with deepening of a harbor or channel beyond the 45 foot threshold.
5. Any user fee imposed should not cause a major shift in cargo from one mode of transportation to another.

Again, thank you for the opportunity to express the views of the NAWG and I will be happy to answer any questions at the appropriate time.

STATEMENT OF J. STEPHEN LUCAS, DIRECTOR OF LOGISTICS AND OPERATIONS, LOUIS DREYFUS CROP., STAMFORD, CT AND CHAIRMAN OF BARGE USERS COMMITTEE NATIONAL GRAIN AND FEED ASSOCIATION

Senator PACKWOOD. Mr. Lucas.

Mr. LUCAS. Mr. Chairman, and members of the subcommittee, my name is Steve Lucas. I'm director of logistics and operations for the Louis Dreyfus Corp. in Stamford, Ct. I'm also chairman of the barge users committee of the National Grain and Feed Association, which I represent in my appearance today.

In the interest of time, again, I would like to only make two points from our standpoint. One on section 502. The National Grain and Feed Association strongly opposes the delegation of the taxing authority to the Secretary of the Army. We have heard discussion of what these things are to be called. They are called user charges; they are called user fees. They are taxes, Mr. Chairman. And we think that authority should rest with the Congress. The Congress has the best mechanism for balancing the competing interests, to determine the most equitable and the most fair and the most efficient way of raising the revenues to make this inland waterway system a viable, workable and efficient system. And we strongly support taking that authority out of this bill from the secretary of the Army.

With regard to Section 1006, the National Grain and Feed Association feels equally strongly that any user fee that is determined or user taxes that are imposed to dredge ports to greater than 45 feet should be borne solely by those people who benefit from having a 50 or 55 foot channel.

We can tell you without equivocation, Mr. Chairman, that is not the export, agricultural industry in the United States. There are only two grain ports in the world that can accommodate a vessel of greater than 40-feet draft. To go through the Panama Canal you are, again, limited by a 40-foot draft to go from the gulf with the products of Senator Danforth's State to go to Japan, to the Orient, to Taiwan. The biggest customers are limited to a 40-foot draft.

Therefore, we feel very strongly that to dredge a port to 50 or 55 feet, those costs should be borne by the people who benefit from those, whoever they are. I'm not sure who they are at this point.

Those two points are our main objection to the two sections that you have under review in this committee. And we would ask that you look at those very, very carefully in your deliberations.

Thank you.

Senator PACKWOOD. I think you can tell from the comments of most of us who have been here today that you don't need to warn us to look very, very carefully at these provisions.

[The prepared statement of Mr. Lucas folows:]

NATIONAL
GRAIN & FEED
ASSOCIATION

STATEMENT OF

THE NATIONAL GRAIN AND FEED ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

COMMITTEE ON FINANCE

U.S. SENATE

BY

J. STEPHEN LUCAS

JUNE 5, 1984

Mr. Chairman and Members of the Subcommittee:

My name is J. Stephen Lucas. I am Director of Logistics and Operations for the Louis Dreyfus Corporation of Stamford, Connecticut. I am chairman of the Barge Users Committee of the National Grain and Feed Association, which I represent in my appearance today.

The National Grain and Feed Association is a voluntary association of grain and feed firms ranging in size from the smallest country elevator to the largest grain and feed complex, and includes merchandisers, processors, warehousemen and exporters of a wide spectrum of grains and feeds. Its membership includes 1,300 direct memberships by individual firms. Forty-five state or regional grain and feed associations are affiliated with the National Association. Their membership includes upwards of 10,000 grain and feed firms nationwide.

Agricultural shippers are major users of the commercial inland waterway system. Grain movements alone account for 37.5 percent of the total commodity

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movements on the entire system. (See Attachment A) Consequently, our members have a direct stake in assuring that this system is adequately maintained and financed.

S. 1739 attempts to address a number of water resource issues to assure rational and fiscally responsible development of these vital resources. The grain and feed industry's principal concerns relate to the cost sharing provisions (sections 502 and 1006) of Titles V and X, which this subcommittee is reviewing today. As stated in our testimony before the Senate Environment and Public Works' Subcommittee on Water Resources in January, we believe that some level of public financing of the inland waterway system is appropriate. We, however, recognize that ever increasing budget constraints on the federal treasury may require greater reliance on user charges as an additional source of revenue for rehabilitation, maintenance and operation of the inland waterway system.

With respect to section 502 of Title V, the National Grain and Feed Association opposes the unlimited delegation of authority to the Secretary of the Army to establish and collect fees from commercial users of the inland waterway system. This authority is constitutionally vested in Congress, which alone can establish taxes. While S. 1739 attempts to circumscribe the Secretary's authority through the establishment of a User Board, it is clear that the Board could only act as an advisory body. Congress properly should retain its taxing authority. Moreover, Congress is better equipped, as a practical matter, to balance competing interests and best ensure the continued maintenance and operation of this vital transportation link. Nevertheless, we recommend that the User Board, established under section 503, be retained to act as an advisory body to Congress.

In the event user charges are established by Congress, the National Grain and Feed Association strongly favors a statutorily defined user charge maximum, as well as a statutory requirement that any such user charges are to be uniformly imposed on all commercial waterways.

With respect to section 1006 of Title X, our industry is equally concerned about the authority delegated to port authorities to collect fees to recover the costs of harbor improvements. Not only do we object to the taxing authority delegation, but also the provision permitting the assessment of twenty percent of the non-federal share of deep draft port planning and construction costs from non-beneficiaries.

Recent amendments to Title X do not cure the fundamental problem with this cost-sharing provision. Rather, they replace the twenty percent limitation with a vague charge that fees "shall reflect to a reasonable degree the benefits produced by the project." This open-ended formula could result in an inequitable burden on non-beneficiaries, which is unacceptable and unjust.

Deep-draft port development will not benefit agriculture. Grain is shipped in shallow-draft vessels with the maximum draft required forty feet. Additionally, most foreign buyers of agricultural commodities do not have deep-draft ports to accommodate such vessels; therefore, agricultural shippers will not benefit nor can they practically use deep-draft vessels for exports of agricultural commodities.

As a matter of principle, "user fees" only should be assessed from direct beneficiaries of a project or service. Agricultural shippers do not need or want deep-draft port development for purposes of increasing agricultural exports. Simple fairness requires that only the beneficiaries of such projects bear the costs.

A few added remarks on the potential impact of increased user charges on the agricultural economy, particularly grain exports, may help put into perspective our industry's deep concern over the cost sharing provisions of S. 1739.

As this committee well knows, U.S. agricultural export markets have been severely depressed for over three years. Our industry, therefore, is apprehensive about waterway legislation that could increase the marketing cost of grain. Higher user fees can only further depress and exacerbate the serious economic problems that exist for agricultural producers and the grain marketing industry.

Because grain shippers and carriers operate in a highly competitive market, they could not absorb the costs of increased user fees. Similarly, it is even more unlikely that these costs could be passed on to foreign buyers. Thus, increased user charges will be passed back to producers, which will further depress gross farm income.

Another consequence of increased waterway user fees is its effect on freight rates of other transportation modes. Barge freight rates are the price leader for bulk commodities among transportation modes. An increase in barge freight rates would be reflected in other transportation rates, especially rail rates. Such increases would result in reducing the price paid for grain in areas which only have land transportation available. These increases would affect the price paid for grain in states as far removed from the inland waterway system as Montana and Colorado.

For these reasons, we urge you to carefully consider the cost-sharing provisions of S. 1739 to assure a fair cost-recovery system that will provide adequate funds to rehabilitate and maintain the inland waterway system, but at the same time, will not further depress the U.S. farm economy and agricultural exports.

Attachment A

1982: Mississippi River (Total System)

Grain movements account for 37.5 percent of the total commodity movements on the entire system.

1983: The following table demonstrates the percentage of total commodity movements accounted for by three different commodities for four key locks in the system.

1983 RIVER BARGE MOVEMENTS -- LOCKS 24, 25, 26, 27

LOCK	GRAIN	COAL	PETROLEUM
24	74.5%	10.3%	3.2%
25	74.5%	10.1%	3.3%
26	65.2%	8.6%	9.6%
24	62.7%	8.0%	11.4%

COLUMBIA AND SNAKE RIVERS -- FEBRUARY 1984

PERCENTAGE OF GRAIN DOWN-BOUND THROUGH:

LOCKS/DAM	% Grain
Bonneville Dam	64.4
The Dalles Dam	83.1
John Day Dam	71.5
McNary Dam	75.0
Ice Harbor Dam	72.9
Lower Monumental Dam	69.1
Little Goose Dam	69.4
Lower Granite Dam	62.8

Source: U.S. Army Corps of Engineers

STATEMENT OF GEORGE L. BERG, JR., ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, DC

Senator PACKWOOD. Mr. Berg.

Mr. BERG. Thank you, Mr. Chairman.

I am George Berg, and I'm representing the American Farm Bureau Federation. The Farm Bureau appreciates the opportunity to present our views concerning S. 1739, the Water Resources Development Act. Since the Committee on Environment and Public Works has reported 1739, it is our understanding that the purpose of this hearing concerns title 5 and title 10 of the bill. Therefore, our comments would be directed to these specific areas.

Title 5, inland navigation, establishes an annual cap of $646 million for Federal inland waterway construction, rehabilitation, renovation, operation and maintenance from 1985 through 1999. The cap is intended to present the current level of the Corps of Engineers expenditures on the inland waterway system. It authorizes the Secretary of the Army to impose and collect user charges on the commercial waterways industry to the degree necessary so that the system is efficient to meet the needs of commercial waterway users.

This title also establishes and inland waterway user board to develop recommendations for expending levels for the next fiscal year. The bill states that the Secretary should not obligate funds under this act in excess of the levels recommended by the user board. Obviously, this title could adversely affect agricultural shippers by the institution of additional user fees to recover waterway service costs. Title 5 does not state the manner in which fees are to be imposed. Are these fees to be collected through a fuel tax, tolls, ton-mile approach, or by the combination of methods? Also, would these fees be imposed on a uniform systemwide basis or on a segment specific basis?

What would be the composition of the inland user waterway board? Since agriculture will be financially affected, will agriculture have a voice on the board? The Secretary of the Army is authorized to recommend projects, construct projects and set user fees with or without the board recommendation being considered. Will the Secretary of the Army also determine who will be appointed to the user board?

Title 10, harbors, establishes a national commission on harbor maintenance which would report to Congress in 2 years on annual long-term costs of maintaining U.S. ports, and make appropriate recommendations for Federal nonsharing costs. A major change in title 10 is a new amendment to section 1006 mandating that 80 percent of the fees imposed for the recovery of the non-Federal cost sharing on vessels requiring deep-water draft. This provision is replaced with a new section stating that fees shall be established only after a public hearing and should reflect to a reasonable degree the benefits provided by the project with particular class of vessels.

The Farm Bureau takes the position that any system of user fee should be developed and administered as a uniform fee in order to maintain existing shipping facilities.

We recognize that some exporters, such as coal, are discussing the need for harbor and channel deepening in excess of 45 feet. The grain ports have no difficulty serving agricultural trade at more conventional depths. Therefore, we feel the cost of a greater depth should appropriately be paid by the shippers.

We accept the imposition of a reasonable user fee on water transportation. However, farmers also recognize the need for equity in establishing a program for increasing waterway user fees, as has been proposed by this legislation. Maintenance of the inland waterway benefits other interests such as defense, national security, export promotion, economic development and so forth. We are willing to pay our fair share, Mr. Chairman, of the cost for water projects. But these other beneficiaries should also share in the funding.

We thank you and the members of the committee for this opportunity to present our views.

Senator PACKWOOD. Thank you, Mr. Berg.

[The prepared statement of Mr. Berg follows:]

SUMMARY OF
THE AMERICAN FARM BUREAU FEDERATION STATEMENT TO THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE CONCERNING THE WATER RESOURCES DEVELOPMENT ACT OF 1983

June 5, 1984

Presented by George L. Berg, Jr.
Assistant Director
National Affairs Division

Farm Bureau appreciates the opportunity to present our views concerning S. 1739, the Water Resources Development Act of 1983.

Since the Senate Committee on Environment and Public Works has already reported S. 1739, it is our understanding that the purpose of this hearing concerns Title V and Title X of the bill. Therefore, our comments will be directed to these specific areas.

Title V, Inland Navigation, establishes an annual cap of $646 million for federal inland waterways construction, rehabilitation, renovation, operation and maintenance expenditures, from 1985 through 1999. The cap is intended to represent the current level of the Corps of Engineers' expenditures on the inland waterways system. It authorizes the Secretary of the Army to impose and collect user charges on the commercial waterways industry to the degree necessary so that the system is sufficient to meet the needs of commercial waterway users.

This Title also establishes an Inland Waterways User Board to develop recommendations for spending levels for the next fiscal year. The bill states that the Secretary should not obligate funds under this Act in excess of the levels recommended by the User Board.

Obviously, this Title could adversely affect agricultural shippers by the institution of additional user fees to recover waterway services costs. Briefly, Title V does not state the manner in which fees are to be imposed. Are these fees to be collected through a fuel tax, tolls, ton-mile approach, or by a combination of methods? Also, would these fees be imposed on a uniform system-wide basis or on a segment-specific basis? What would be the composition of the Inland Waterway User Board? Since agriculture will be financially affected, will agriculture have a voice on the Board? The Secretary of the Army is authorized to recommend projects, construct projects and set user fees (with or without the Board recommendations being considered). Will the Secretary of the Army also determine who will be appointed to the User Board?

Title X, Harbors, establishes a National Commission on Harbor Maintenance which would report to Congress in two years on annual and long-term costs of maintaining U.S. ports and make appropriate recommendations for non-federal cost-sharing. Until the report is issued and Congress acts, this Title would place a $350 million annual cap on federal harbor maintenance expenditures.

A major change in Title X is a new amendment to Section 1006, mandating that 80 percent of any fees imposed for the recovery of the non-federal cost sharing on vessels requiring deep harbor draft. This provision is replaced with a new section stating that fees shall be established only after a public hearing and should reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

Farm Bureau takes the position that any system of user fee should be developed and administered as a uniform fee in order to maintain existing shipping facilities. We recognize that some exporters, such as coal, are discussing the need for harbor and channel deepening in excess of 45 feet. The grain ports have no difficulty serving agricultural trade at more conventional depths; therefore, we feel the cost of the greater depth should appropriately be repaid by the coal shippers.

We accept the imposition of a reasonable user fee on water transportation. However, farmers also recognize the need for equity in establishing a program for increasing waterway user fees as has been proposed by this legislation. Maintenance of inland waterways benefits other interests such as defense, national security, export promotion, regional economic development, and recreation. We are willing to pay our fair share of the cost for water projects but these other beneficiaries should also share in the funding.

Mr. Chairman, in 1983 the U.S. exported 162 million metric tons of wheat, feed grains, corn and soybeans. Approximately 40 percent of these exports moved through the Nation's waterways. The U.S. agricultural trade surplus amounted to $23.6 billion in the 1981/82 fiscal year and $18.4 billion in 1982/83 compared to non-agricultural trade deficits of $57.4 billion and $70.[illegible] billion in these years, respectively. A vital element in the success of American agriculture has been the availability of efficient, competitive, domestic transportation, which must be maintained in order to protect the competitive position of the American agricultural producer in world markets.

Mr. Chairman, we thank you and the members of the Subcommittee for this opportunity to comment on Titles V and X of S. 1739, the Water Resources Development Act of 1983.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION TO THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE CONCERNING THE WATER RESOURCES DEVELOPMENT ACT OF 1983

June 5, 1984

Presented by George L. Berg, Jr.
Assistant Director
National Affairs Division

Farm Bureau appreciates the opportunity to present our views concerning S. 1739, the Water Resources Development Act of 1983.

Farm Bureau is the nation's largest general farm organization with a membership of 3.3 million member-families in 48 states and Puerto Rico. Farm Bureau policy is developed by the farmer and rancher members at the county, state and national levels of the organization.

During our 65th annual meeting in January, the voting delegates adopted the following policy regarding waterways:

> "Public policy should encourage expansion of inland water transportation since it represents the most energy-efficient mode... We accept the imposition of a reasonable user fee on water transportation dedicated for waterway purposes providing that its basis and maximum level are clearly established in advance and the proceeds are utilized for those waterways from which the fees are derived. Any user fee applied to water transportation should be at a level which will provide no more than that portion of the cost of waterways allocable to transportation, inasmuch as the waterways also provide significant public benefits in recreation, wildlife preservation, public water supply and flood control. Any system of user fees should be developed and administered as a uniform fee in order to maintain existing shipping facilities."

Since the Senate Committee on Environment and Public Works has already reported S. 1739, it is our understanding that the purpose of this hearing concerns Title V and Title X of the bill. Therefore, our comments will be directed to these specific areas.

Title V, Inland Navigation, establishes an annual cap of $646 million for federal inland waterways construction, rehabilitation, renovation, operation and maintenance expenditures, from 1985 through 1999. The cap is intended to represent the current level of the Corps of Engineers' expenditures on the inland waterways system. It authorizes the Secretary of the Army to impose and collect user charges on the commercial waterways industry to the degree necessary so that the system is sufficient to meet the needs of commercial waterway users.

This Title also establishes an Inland Waterways User Board to develop recommendations for spending levels for the next fiscal year. The bill states that the Secretary should not obligate funds under this Act in excess of the levels recommended by the User Board.

Title V also authorizes 12 inland navigation projects--including replacement of Bonneville Lock, Columbia River; Gallipolis Locks, Ohio River; locks 7 and 8, both on the Monongahela River; and implementation of the recommendations of the Upper Mississippi River Basin Commission Master Plan, which includes authorization of a second lock at Lock and Dam 26, Upper Mississippi River; and directs the federal government to share with New York State a portion of the operation and maintenance and rehabilitation costs of the New York State Barge Canal.

Obviously, this Title could adversely affect agricultural shippers by the institution of additional user fees to recover waterway services costs. Briefly, Title V does not state the manner in which fees are to be imposed. Are these fees to be collected through a fuel tax, tolls, ton-mile approach, or by a combination of methods? Also, would these fees be imposed on a uniform system-wide basis or on a segment-specific basis? What would be the composition of the Inland Waterway User Board? Since agriculture will be financially affected, will agriculture have a voice on the Board? The Secretary of the Army is authorized to recommend projects, construct projects and set user fees (with or without the Board recommendations being considered). Will the Secretary of the Army also determine who will be appointed to the User Board?

The cap on the federal government's contribution to waterway expenditures is not indexed to inflation. Such indexing should be adopted.

Title X, Harbors, establishes a National Commission on Harbor Maintenance which would report to Congress in two years on annual and long-term costs of maintaining U.S. ports and make appropriate recommendations for non-federal cost-sharing. Until the report is issued and Congress acts, this Title would place a $350 million annual cap on federal harbor maintenance expenditures.

Section 1003 of Title X would require non-federal interests to pay 30 percent of construction costs of general cargo harbors (defined as 14 feet to 45 feet), including lands, easements, and right-of-way.

Non-federal interests would be required to finance 100 percent of construction for deep-draft harbors (over 45 feet), but may obtain federal loan or bond guarantees up to 70 percent.

Non-federal interest would also be responsible for funding 50 percent of the incremental operational and maintenance costs for ports and harbors over 45 feet.

A major change in Title X is a new amendment to Section 1006, mandating that 80 percent of any fees imposed for the recovery of the non-federal cost sharing on vessels requiring deep harbor draft. This provision is replaced with a new section stating that fees shall be established only after a public hearing and should reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

Farm Bureau takes the position that any system of user fee should be developed and administered as a uniform fee in order to maintain existing shipping facilities. We recognize that some exporters, such as coal, are discussing the need for harbor and channel deepening in excess of 45 feet. The grain ports have no difficulty serving agricultural trade at more conventional depths; therefore, we feel the cost of the greater depth should appropriately be repaid by the coal shippers.

Our concerns with respect to Title X are the same as with Title V, the nature and amount of the user fees is not spelled out in the legislation. We question whether the $350 million annual cap is sufficient for federal harbor maintenance expenditures. Obviously, agriculture will help pay for construction, operation, and maintenance. The legislation does not provide agriculture a voice on the newly established Commission on Harbor Maintenance.

We accept the imposition of a reasonable user fee on water transportation. However, farmers also recognize the need for equity in establishing a program for increasing waterway user fees as has been proposed by this legislation. Maintenance of inland waterways benefits other interests such as defense, national security, export promotion, regional economic development, and recreation. We are willing to pay our fair share of the cost for water projects but these other beneficiaries should also share in the funding.

Mr. Chairman, in 1983 the U.S. exported 162 million metric tons of wheat, feed grains, corn and soybeans. Approximately 40 percent of these exports moved through the Nation's waterways. The U.S. agricultural trade surplus amounted to $23.6 billion in the 1981/82 fiscal year and $18.4 billion in 1982/83 compared to non-agricultural trade deficits of $57.4 billion and $70.0 billion in these years, respectively. A vital element in the success of American agriculture has been the availability of efficient, competitive, domestic transportation, which must be maintained in order to protect the competitive position of the American agricultural producer in world markets.

We trust the members of your Subcommittee and the Congress will give close study and consideration to the waterway user fee issue in a further effort to determine how much of the waterway costs are actually attributable to commercial navigation.

Mr. Chairman, we thank you and the members of the Subcommittee for this opportunity to comment on Titles V and X of S. 1739, the Water Resources Development Act of 1983.

STATEMENT OF R. THOMAS VAN ARSDALL, VICE PRESIDENT, AGRICULTURAL INPUTS AND SERVICES, NATIONAL COUNCIL OF FARMER COOPERATIVES, WASHINGTON, DC

Senator PACKWOOD. Mr. Van Arsdall.

Mr. VAN ARSDALL. Mr. Chairman, the National Council is extremely pleased that this committee is taking this valuable time to examine revenue related matters of S. 1739, as we are concerned that this bill, as presently drafted, could impose unduly harsh economic burdens on American farmers.

The National Council supports the concept of paying for a fair share of the total cost of inland waterway construction, maintenance and operations. We are paying user fees now.

We believe that title V should be modified to meet two basic objectives. First, Congress should not unilaterally give up its constitutionally mandated power to set taxes. And, second, if agriculture is going to help pay for these projects, then we should have a voice in the decision process.

Now, if the user commission had all the powers of decision ascribed by some today, I don't think we would be here. We would be on the floor passing S. 1739. But with the creation of a strengthened, independent user commission, jurisdictional and taxing committees would be able to receive up-to-date input from both the user community and the corps regarding costs, benefits, and priorities before any decisions concerning the taxing of users are made. Based on a balanced consideration of infrastructure needs and the user community's economic condition, or ability to pay, user fee decisions could be coordinated with decisions regarding the timing and speed of construction, rehabilitation and new project starts.

The National Council must emphasize that under these proposed modifications we are not opposing new user fees, but rather stating that the Congress should make the final determination, preferably after receiving timely information in a structured process.

And sufficient time is available to implement this proposal correctly. Based on corps estimates of the impacts of S. 1739, no significant increases in user fees would occur until fiscal year 1988. Others suggest 8 years or more. What's the rush to make that difficult decision now?

Now concerning title X, agriculture is not even a little bit interested in subsidizing projects for which we receive no benefits. We have enough trouble paying for the bills that we incur directly. Yet this title requires that 20 percent of the non-Federal share of deep draft projects, which agricultural shippers do not need, be subsidized. We oppose that requirement.

The compromise amendments recently introduced are a move in the right direction. However, if Congress side-steps this difficult problem of cost recovery, agriculture shippers are likely to face a costly and administrative nightmare as they try to make their case on the basis of vague legislative language at public hearings at individual ports.

Thank you for this opportunity to present our comments.

[The prepared statement of Mr. Van Arsdall follows:]

Statement of
The National Council of Farmer Cooperatives
Presented by
R. Thomas Van Arsdall
Vice President, Agricultural Inputs and Services

INTRODUCTION

Mr. Chairman and Members of the Committee, my name is Tom Van Arsdall, Vice President of Agricultural Inputs and Services for the National Council of Farmer Cooperatives. Our Transportation Committee includes representatives of farmer cooperatives across the nation who are vitally dependent upon rail, inland waterways and ports for the movement of agricultural inputs and commodities.

The National Council of Farmer Cooperatives is an association of cooperative businesses which are owned and controlled by farmers. Our membership includes 107 major marketing and farm supply cooperatives, the 37 banks of the cooperative Farm Credit System, and 32 state councils of farmer cooperatives. The National Council represents about 90 percent of the 6,100 local farmer cooperatives in the nation, with a combined membership of nearly two million farmers.

Cooperatives are in the business of supplying inputs, and transporting and marketing commodities for their farmer-owners. Not only does this system carry with it a unique accountability, but it also directly ties the costs of doing business across the food system to the farmer. Cooperatives by definition are non-profit institutions which rebate savings to farmer-owners in the form of patronage refunds. Increased cost of doing business translates into lower savings.

Farm cooperatives transport an increasing volume of farm inputs and production. Cooperatives move over 70% of all U.S. milk and milk products, almost 50% of total U.S. grain and soybean production and 25% of the nation's fruits and vegetables. They transport 36% of U.S. fertilizer and lime, and supply 45% of on-farm fuel requirements.

This statement focuses on specific sections of S. 1739, The Water Resources Development Act of 1983. Sec. 502 of Title V authorizes the Secretary of the Army to impose and collect user fees for commerical navigation of inland waterways and harbors. Sec. 1006 of Title X authorizes local ports to implement user charges to recoup the cost of construction and maintenance for harbor improvements and dredging. Briefly, the testimony covers the following major points:

- The critical importance of inland waterways and ports to U.S. agriculture.
- The potential impact of new user fees upon agricultural income and export competitiveness.
- National Council opposition to granting the authority to impose user taxes to the Secretary of the Army.

- National Council recommendations to improve the effectiveness and equity of S. 1739:
  - --Ensure that power to impose commercial navigation fees or taxes remains with Congress.
  - --Strengthen responsibilities of User Commission and require Congressional approval of any new user fees.
  - --Require only direct beneficiaries to pay any user contribution for dredging of deep water ports.

AGRICULTURE HEAVILY DEPENDENT ON WATER TRANSPORTATION

This nation's agricultural community is heavily dependent upon the inland waterway and port system for the movement of key agricultural inputs to the farm, including fertilizer and fuel, and for shipment of bulk agricultural commodities to domestic and export markets. In 1983, 126.2 million metric tons of grain, oilseeds and oilseed products were exported. In other words, one out of every three bushels of these crops produced in the U.S. was shipped through ports for export. The lower Mississippi River is the site of 11 export grain elevators which together move about half of all grain exports. About 40% of U.S. grain and oilseeds move by barge between the farm and their final destination.

Mr. Chairman, agricultural exports have served as the shining beacon in what has been an otherwise dismal balance of trade picture. Agricultural exports account for almost 20% of total U.S. exports. They have helped to buffer huge oil price shocks over the past decade, and to offset a consistent trade deficit from other sectors of the economy. This nation's international monetary account would be in shambles were it not for the efficiency and productivity of U.S. agriculture. A cost-effective inland waterway and coastal port complex is essential to translate U.S. on-farm efficiency into international competitiveness. S. 1739 will play a major role in shaping the future efficiency and cost-effectiveness of the American farmer and our national transportation system for years to come.

USER FEE IMPACTS ON AGRICULTURE

The National Council endorses the general concept that users of a transportation system should pay an equitable share of its cost of operation, maintenance and construction, based upon a fair assessment of the proportional benefits which are received from use of that system. Indeed, commercial inland waterway users presently pay a user fee of 8 cents per gallon of diesel fuel. This is scheduled to increase to 10 cents per gallon on October 1, 1985. However, the Committee is very aware of the multi-dimensional benefits which accrue to various national needs from our inland waterway and port system, including national defense, flood control, recreation, water quality, water supply and regional economic development. Both commercial and non-commercial benefits are difficult, if not impossible, to quantify in a precise manner in any cost allocation process. The National Council believes that the existing user fee structure fairly represents the agricultural community's share of the benefits and therefore costs.

It is important in any consideration of cost recovery to understand how such fees translate into impacts upon the agricultural community. As a general rule of thumb, every 1¢/gallon tax on diesel fuel used by barges translates into 0.3¢/bushel of grain moved. This means that the present fee increases grain costs about 2½¢/bushel.

Rail is the only major alternative to inland waterway transportation of grains and agricultural inputs. Based on past experience, the National Council believes that any increase in water user fees will stimulate a similar increase in rail rates. The long-haul trucking rate structure would also receive a windfall. Thus, this Committee's decision on cost recovery will have an impact on the cost of moving almost every ton of fuel and fertilizer, and every bushel of grain.

Navigation cost-recovery represents a serious farm income issue to our members. Farmers are "price takers," not "price makers," and increased production and marketing costs cannot be passed on automatically to the consumer.

Some have suggested that grain elevators or processors could absorb additional costs from user fees. However, they would have little incentive not to pass fees back to the farmer in the form of less price per bushel, unless an exceptionally severe short-supply situation occurred. Such a tight supply-demand outlook is highly improbable, barring a broad natural catastrophe. Regardless, if costs were absorbed by individual cooperatives, then farmers would receive a smaller annual patronage refund. Either way, the farmer pays.

Would increased user fees be absorbed by U.S. foreign customers? No, because U.S. agricultural exports compete with foreign-produced farm products on a cost-at-destination basis. If user fees were passed along to U.S. overseas customers, the U.S. would lose markets, since the success of a grain trade can hinge on 1/4¢ margin per bushel. Put simply, new user fees would price American farmers out of the world market.

Since U.S. production dictates world grain and oilseed prices, in the long run user fees only create a higher threshold price which further encourages foreign agricultural exporters to increase their production base and capture additional market shares from U.S. agriculture. The ripple effect of the macroeconomic consequences of reduced exports is bad news for farmers' income and for the national economy.

Thus, over the short- and long-term the farmer and his cooperative are in a no-win situation. S. 1739, as presently drafted, could require almost a 500% increase in user fees by 1990, according to Corps of Engineers' estimates. The 38¢/gallon increase which this represents translates into a devastating impact on farmers. The cost of moving farm inputs (fuel and fertilizer) by barge would significantly increase. On average, the cost of marketing grain would jump an average 11½¢/bushel based solely upon this tax. We have pointed out that increases in the cost of waterway transportation would likely be accompanied by a similar escalation in rail and truck rates, To put this into perspective, if increases in grain are fully absorbed by the farmer, net farm income could drop at least $1.4 billion, based on USDA's 1983 utilization data. Since USDA estimates 1983 net farm income at $22-24 billion, this could mean a minimum 6% drop in net farm returns (Attachment 1).

The National Council strongly believes that the benefits accrued directly to agriculture from the inland waterway system fall far short of justifying this devastating impact, which does not even include user fees from port development. We are concerned that S. 1739 could put an unprecedented financial burden on the backs of American agriculture which exceeds fair cost-sharing.

SECTION 502, TITLE V:
INLAND WATERWAY COMMERCIAL COST-SHARING

The National Council is pleased that Title V of S. 1739 addresses the difficult issue of how to finance the rehabilitation and improvement of this nation's inland waterway infrastructure. Title V offers a commitment for the first time by the Federal Government to a $646-million-base level of expenditures, with amounts in excess to be derived through user fees.

The National Council supports the concept of beneficiaries paying for a fair share of the total costs of inland waterway construction, maintenance and operations. Agricultural users are presently paying a user fee. However, the National Council believes that Title V should be modified to meet three basic objectives:

- Congressional retention of its power to impose taxes.
- If "user pay, user say."
- Dedication of user fee revenues to intended uses.

Taxing Power:

As presently written, Sec. 502 essentially grants the Secretary of the Army a "blank check" to set fee levels and types at his discretion. Not only would such broad, discretionary authority add dangerous risk and volatility to agricultural marketing, but it also violates the constitutional principle that Congress has the sole authority to tax.

The "user fees" authorized under Sec. 502 are not simple repayment for the cost of specific federal services rendered. Instead, they are taxes to be collected and deposited in the U.S. Treasury to help defray general federal disbursements for operation, maintenance and improvement of the nation's commercial navigation system.

The National Council urges this Committee not to unilaterally waive its Constitutionally-granted power to impose taxes, as proposed in S. 1739. On a practical level, we are concerned that well-intentioned zeal on the part of the Corps to complete and pay for projects expeditiously could damage agricultural marketing, absent mandatory Corps accountability.

User Pay, User Say:

The National Council strongly endorses the concept that "if user pay, user say." For this reason, a strong User Commission is essential to an equitable and informed resolution of the cost-recovery debate.

We believe that such a User Commission should be strengthened, to reflect agriculture's proportionate use of the waterway system. To ensure that the User Commission has the ability to make decisions independently from the Corps, we recommend that this Commission be provided with funds and authority for a paid staff and at least three meetings per year. This User Commission should be required to submit a report to Congress each year with recommendations on future project and cost-recovery needs. There should be a mandatory hearing on this annual report.

In addition, the Corps should be required to report to Congress annually with an assessment of the adequacy of the funds appropriated under the cap to permit scheduled construction, and the need for adjustments--if any--in user fees.

Thus, jurisdictional and taxing committees would receive up-to-date input from both the user community and the Corps regarding costs, benefits and priorities before any decisions concerning the taxing of users are made. Based upon a balanced consideration of infrastructure needs, and the user community's economic condition (or ability to pay), user fee decisions could be coordinated with decisions regarding the timing and speed of construction, rehabilitation and new project starts.

The National Council must emphasize that under these proposed modifications, we are not opposing new user fees--but, rather stating that the Congress should make the final determination, preferably after receiving timely information through a structured process.

Sufficient time is available to implement this proposal correctly. Based upon Corps estimates of the impact of S. 1739, no significant increases in user fees would occur until FY' 88.

In addition, it is our understanding that one amendment to Title V of S. 1739 currently under consideration would exclude from the inland waterway funding "cap" the annual fuel tax receipts, and lower the cap by the amount of the current annual level of those receipts. This would lower the cap to about $626 million. The National Council is prepared to support such a modification. The need for additional user fees would be deferred even further by this amendment if Corps projections about increased user contributions at present fee levels are correct.

Therefore, the User Commission and the Corps will have more than adequate time to prepare the data needed for Congress to make informed decisions at the appropriate time. We believe that it would be unsound policy for Congress to make a user fee determination now, forced to rely upon incomplete and perhaps inaccurate analyses. Conversely, we can see no penalty that could be incurred in deferring this decision until the information needed can be made available.

Should the Congress believe that some leverage must be maintained to ensure that this issue is revisited, then perhaps the proposed modifications could be linked to a sunset in the federal funding cap. Additionally, Congress still maintains control over government expenditures, even after approval of project authorizations, through the incremental appropriations process.

Dedication of User Fee Revenues:

We might point out the user community has already contributed $97 million to the Inland Waterway Trust Fund to date. Yet these funds remain in general Treasury receipts and have not been dedicated for waterway project construction--as intended by Congress. If fiscal responsibility is an issue, one could begin by requiring that those funds be expended as intended. Our experience with these earlier contributions certainly raises legitimate questions about the concept of new user fees, and how such funds would actually be expended.

In summary, the National Council's proposed modifications to Title V will encourage much needed improvements in efficiency and accountability, and will permit for the first time a significant role for the user community in determining cost-recovery. In addition, the carefully crafted system of checks and balances between the legislative and executive branches of government would be maintained.

SECTION 1006, TITLE X:
PORT & HARBOR COST RECOVERY

Agricultural shippers are acutely aware that they face double cost recovery, since S. 1739, as now written, would force them to pay user fees for inland and port navigation. We urge this Committee to recognize the cumulative impact of cost recovery on shippers, especially since the Committee will hear separate testimony from waterway and port interests.

The National Council supports the eminently fair concept in Title V that users not pay for what they do not use. Inland commercial navigation is not penalized with cost recovery for non-navigation projects.

It is unfortunate that Sec. 1006 of Title X does not squarely apply the same logic. Specifically, Title X requires that 20% of the non-federal share of deep draft planning, design and construction costs be paid by non-beneficiaries. The National Council vigorously opposes this form of subsidization by agricultural shippers and other non-beneficiaries.

Our farmer cooperative members believe that agricultural shippers should not be forced to subsidize deep-draft dredging they do not need. Grain is generally shipped in 25,000-35,000 dwt vessels with a 28' - 35' draft. In addition, our overseas customers are not equipped to accommodate large single unit export volumes. Overseas ports which take delivery of most U.S. farm exports do not have deep draft channels leading to grain off-loading facilities.

Not only are the depths at most foreign ports receiving U.S. grain inadequate to handle large Panamax vessels, but their terminal capacity is not adequate to handle huge bulk grain shipments. On- and off-loading facilities, storage capacity and transportation to processing and distribution centers are all geared to handle a steady flow of smaller grain volumes. Even if massive amounts of grain did reach foreign processing plants, foreign processors would not have the capacity to expeditiously handle a 50,000-dwt-vessel shipment. Additional storage costs would have to be paid, providing storage were available. For example, a typical shipment from a 50,000 dwt vessel carrying soybeans would generate a 50- to 60-day supply for the typical foreign processor.

Arguments have been made that ports would not impose costly new user fees on agricultural export vessels to prevent loss of valuable traffic to nearby competing ports. While that may be logical in theory, in reality the ports that have expressed an interest in deep draft improvements are the same ones which have the substantial grain export infrastructure needed to process today's huge export volumes. In addition, grain exports would not be easily diverted to smaller ports since grain cooperatives have made sizable investments in handling, storage and loading facilities at present export locations.

Compromise amendments regarding Title X were recently proposed which would authorize local ports to impose user fees on the non-federal share of costs for port improvement and dredging. User fees would be imposed only after a full public hearing and must "reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel."

Since the National Council endorses linking benefits to imposition of port user fees, this new proposal is clearly a step in the right direction. However, if Congress sidesteps the difficult problem of port cost-recovery, agricultural shippers will face a costly, administrative nightmare as they try to make their case at public hearings at individual ports. Lengthy economic analyses to prove or disprove speculative benefits received from a proposed project would be needed, as well as extensive legal testimony and representation. In addition, the language stating fees must reflect "to a reasonable degree" the benefits from a specific project is dangerously vague. What may appear reasonable to an investor seeking to maximize loan security may not be reasonable for a shipper who does not believe he should help pay for improvements he does not directly use.

In summary, since U.S. farmers do not need vast new dredging projects, we believe that we should not have to bear the costs of non-grain-related dredging or other commodity-specific improvements. If a bona fide "user fee" is to be charged, then equity demands that the burden of financing be placed on the true users.

CONCLUSION

The National Council of Farmer Cooperatives stands ready to work with you to refine S. 1739 and to move this vital legislation to final passage. User fees have a role in sound transportation policy. However, agriculture has already contributed millions of dollars to the Inland Waterways Trust Fund and will continue to do so under the existing user fee schedule. We encourage this Committee to adopt our proposed amendments.

We are pleased to have the opportunity to offer our views to the Committee on an issue of vital concern to the National Council.

June 5, 1984

ATTACHMENT 1

IMPACT ON U.S. GRAIN FARMERS
OF
S. 1739, TITLE V

COMMODITY	TOTAL USE MY 82/83	IMPACT of 38¢/GALLON* FUEL TAX INCREASE (11.4¢/bu)
WHEAT	2,437 mil bu	$278 million
CORN	7,544 " "	$860 "
SORGHUM, BARLEY, OATS	460 " "	$ 52.4 "
SOYBEANS	2,109 " "	$240.4 "

*The Army Corps of Engineers estimates that S. 1739 would result in a total user fee of 48¢/gallon by 1990. Since the existing fee will already account for 10¢/gallon of this total, the chart illustrates the additional impact of the remaining 38¢/gallon on farm income for major U.S. grains.

EXPLANATION: In these calculations it is assumed that rail and truck rates will increase in a manner commensurate with barge rates increases due to cost recovery.

The scenario is based on a conservative estimate by the Minnesota Department of Transportation that a 1¢ change in barge diesel fuel taxes translates into a 0.3¢ cost change per bushel.

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Senator **Packwood**. Gentlemen, thank you very much. I clearly agree with everything that you are all saying. You are all saying almost identically the same thing. I share completely what you want to do. Unless I miss my guess, if this bill were to pass the way it came here, rather than the way I hope we change it, we are just starting down the road of fees so extraordinary that I think farmers are not going to be able to afford to ship on the water. And my hunch is if the fees are as high as I fear they might be, there aren't going to be any barges on the water anyway to carry the produce.

If that is the direction this country wants to go, I oppose it, but let's face up to it, and let's talk about that proposal. We are no longer going to have a system of transportation that we have understood for the better part of 200 years in the country. Instead we are going to go a system—Senator Abdnor said earlier we will have three deep draft ports in this Nation. One on the east coast, one on the gulf, one on the west coast, I guess.

And that is all we need, he said. And maybe all that we need is really one form of transportation to get your produce to market. And if we choose that to be railroad, so be it. They have a monopoly shipper situation and they can charge what they want, so be it. That in my mind is not a competitive system, and it's not a good system for this country.

Thank you very much. I have no questions.

Next we will take Connie Holmes representing the National Coal Association.

STATEMENT OF CONNIE HOLMES, VICE PRESIDENT, INTERNATIONAL TRADE, NATIONAL COAL ASSOCIATION, WASHINGTON, DC

Senator **Packwood**. Good afternoon.

Ms. **Holmes**. Thank you, Mr. Chairman. We appreciate this opportunity to appear here today to give you our views on S. 1739, both with title 5, dealing with the inland waterway system, and title 10, dealing with the authorization of non-Federal entities to recover costs of coastal port construction and maintenance by imposing fees on vessels in commercial waterway transportation.

National Coal Association supports S. 1739 to the extent that urgently needed improvements on our inland waterway system and at our coastal ports are authorized. However, both titles 5 and 10, as reported out of the Senate Committee on Environment and Public Works in November 1983, contained provisions to which we do object.

Although our written statement addresses all of section 5 and 10, my oral statement will merely address our concerns on section 502 and 1006, over which this committee has jurisdiction.

Section 502 of S. 1739 would, of course, as has been repeated earlier, authorize the Secretary of the Army to impose and collect user charges on commercial users of the inland waterway system. We share the concerns of the earlier witnesses before this hearing about this section, which would—and the section that would empower the Secretary of the Army to establish these new user fees at levels that the Secretary would deem necessary.

We believe that giving the Secretary of the Army authority to develop water transportation policy of a broad nature totally independent to the Congress is wrong and must be corrected by adopting mandatory language for the bill which leaves final decision on financing waterway programs completely with the Congress.

We believe that section 502 should be deleted, and instead amendments added to create an Inland Waterway Commission charged with reporting to the Congress in 3 years on cost sharing on the inland waterway system and on suggesting an equitable user fee methodology.

Should Congress decide that new waterway user charges over and above the schedule of fuel taxes in effect under the 1978 act be required, then we believe that any such increase should be used only to cover navigation costs, should be phased in over a period of years, should be applied on a systemwide basis as a fuel tax, and should be tied to accelerated improvements needed at very critical points on our inland waterway system.

However, we reiterate the decisions on any new user charges, whether they be taxes or fees, must rest directly with the Congress and not with the Secretary of the Army.

With respect to section 1006 of title 10, this section, as originally reported out of the Environment and Public Works Committee last November, authorized the non-Federal interest to cover the cost of its share of the project construction costs as well as incremental maintenance costs and operations costs through the imposition of user fees. The precise nature of the fees, the fee structure and the fee schedule was left to the discretion of the non-Federal interest. However, explicit instructions were given that 80 percent of costs be recovered from the direct beneficiaries.

Let me say that National Coal Association has and still supports authorization of the collection of user fees to cover the local share portion of project costs. And although we support the concept that fees and project beneficiaries should be related, the individual port, we believe, should be given the discretion to determine the way these fees are imposed.

Each general cargo or deep draft harbor faces a different competitive situation, has different traffic patterns, as well as widely varying pay-back amounts, projects costs, and cost for maintenance.

As we pointed out in our statement the direct beneficiaries are very difficult to specifically identify. NCA supports section 1006 of title 10 as included in amendment 3137, introduced by Senator Abdnor earlier. This provision would extend to the ports the needed flexibility in the imposition of user fees by only directing that such fees be established after public hearings, and that fees should reflect to a reasonable degree the benefits provided by the projects to particular classes or type of vessel.

Further, directions are given that fees not be imposed on vessels drawing less than 14 feet of draft or vessel in intraport movement.

We would further recommend that fees to recover construction costs not be imposed on vessels engaged only in inter U.S. coastal port movements.

Thank you.

[The prepared statement of Ms. Holmes follows:]

STATEMENT
CONSTANCE D. HOLMES
VICE PRESIDENT - INTERNATIONAL TRADE
NATIONAL COAL ASSOCIATION
ON
S.1739
TITLE V - SEC. 502
AND TITLE X - SEC. 1006
SENATE FINANCE COMMITTEE
JUNE 5, 1984

Mr. Chairman, my name is Connie Holmes, I am Vice President International Trade of the National Coal Association and Executive Director of NCA's affiliate the Coal Exporters Association. NCA represents coal producers, coal sellers, and other organizations associated with America's coal industry. CEA represents NCA member companies that are engaged in exporting America's coal to various world markets. This statement is being presented on behalf of both organizations.

Mr. Chairman, we appreciate your leadership in scheduling these hearings on S. 1739, Title V (sec. 502) dealing with fees on commercial users of the inland waterway system and Title X (Sec. 1006) which gives non-federal entities authorization to recover costs of coastal port construction and maintenance by imposing fees on vessels in commercial waterway transportation.

NCA supports Title V and Title X to the extent that urgently needed improvements on our inland waterway systems and at our coastal ports are authorized. However, both Titles, as reported by the Senate Committee on Environment and Public Works in November of 1983, contain provisions to which we object. This statement will summarize our objections and suggest changes which this committee could make to improve the proposed legislation.

TITLE V, S. 1739 - INLAND NAVIGATION

Sec. 502, S. 1739 authorizes the Secretary of the Army to impose and collect user charges on commercial users of the inland waterway system. This section newly empowers the Secretary of the Army to establish new user fees at levels the Secretary deems to be necessary. Giving the Secretary of the Army authority to develop water transportation policy of a broad nature totally independent to the Congress is wrong, and must be corrected by adopting amendatory language for the bill which leaves final decisions on financing waterway programs with the Congress.

The nation must not neglect work needed to assure that the nation's inland waterway system continues to be an essential component of our total freight transportation network. Inland waterways provide an efficient avenue for the movement of the many bulk commodities, including coal, that are vital to our economic and national security. The eight year moratorium on capital improvement project authorizations and appropriations has seriously threatened the ability of the inland waterway system to provide for the safe and efficient movement of towboats and barges under even current traffic demand. Projected traffic levels will put an even greater strain on the system. S. 1739 would provide the authorization necessary to proceed with work on critical waterway improvements without further delay.

The Federal Government must not fail to meet its long standing responsibility to assure that the inland waterway system is operated and maintained and that justified improvements are made in a timely manner. A sound waterway system enhances our nation's economy and security by virtue of its intrinsic value in allowing efficient bulk freight movements. With regard to financing of capital improvements, the monies collected and held in trust in the Inland Waterways Trust Fund established under the Inland Waterways Revenue Act of 1978 should not be diverted from the purposes set forth in the Act, namely, for construction and rehabilitation expenditures for navigation on inland and intracoastal waterways.

S. 1739 should be amended to add appropriate language which makes it clear that the bill does not change the purposes for which the Trust Fund was established.

S. 1739 should not give the Secretary of the Army new authority to impose user fees. This provision should be deleted from the bill and amendments added to create an Inland Waterway Commission charged with reporting to the Congress in three years on cost sharing on the inland waterway system and on suggesting an equitable user fee methodology. Should Congress decide that new waterway user charges, over and above the schedule of fuel taxes in effect under the 1978 Act, be required, any such increase should be: (a) used only to cover navigation costs; (b) phased in over a period of years; (c) applied on a systemwide basis as a fuel tax; and (d) tied to accelerated improvements needed at critical points.

Mr. Chairman, the approach taken in S. 1739 to financing work on the inland waterway system must be changed. It is not appropriate to empower the Secretary of the Army to set new user fees, even with advice and input from a new users board which would advisory in nature. Furthermore, it is not desirable or appropriate to "freeze" federal expenditures from the Trust fund and general revenues for both construction and rehabilitation work and for operation and maintenance (O&M) under a single "cap" on Federal obligations. This would incorrectly commingle trust fund and other expenditures for construction and rehabilitation with those used for O & M purposes and would enable the diversion of user funds held in trust for capital improvements to O&M work.

To conclude our comments on Title V, we believe that decisions on any new user charges, whether taxes or fees, must rest directly with the Congress. The legislative process should be exercised fully by the Congress to enable all parties of interest, public and private, to participate in the formulation of cost-sharing and user fee policies by the Congress. S. 1739 is in urgent need of amendatory language to which reference was made earlier in order to preserve this vital role of the Congress.

TITLE X - HARBORS

Title X, S. 1739 addresses the need to maintain and improve the Nation's coastal ports and harbors. Without question, deeper channels at our coastal ports are necessary if the United States is to maintain its position as a major exporter of bulk commodities.

The change in world trade patterns experience over the last three years has not obviated this need but has made it greater. If the United States is to be cost competitive in the world market for bulk commodities, we must soon have the capability to load larger, and more cost efficient vessels.

This statement is especially true in the case of coal. In the last two years, the United States has lost a substantial portion of our market to coal exporting countries that can provide our customers' requirements at a much lower cost. Access to deep draft harbors will assist us in lowering the delivered cost of U.S. coals and in regaining at least part of the market lost to other producers.

National Coal Association does not oppose the imposition of user fees to fund port and harbor improvements. Indeed, we support them. As we have stated several times before various Committees of the Senate, National Coal Association was among the first to acknowledge that despite demonstrated need, our coastal ports would not be dredged without agreement on the part of the port and the user to pay at least part of the projects costs. Almost two years ago, the NCA Board adopted a position which was supportive of legislation authorizing dredging projects to be paid at least in part by local (port and user) interests.

Specifically, NCA supports legislation that would:

- authorize ports to dredge channels to deeper depths wherever such a dredging project is economically justified;
- provide that the costs of dredging work be shared by the

federal government and port authority (and by implication the port user), with all funds required advanced by the federal government and with payback to begin after construction is completed;

- give the port authority the flexibility to start and complete a dredging project without further federal concurrence and involvement if the port authority agrees to pay 100 percent of construction and incremental O&M costs;
- expedite the environmental review and permitting necessary before a port and harbor dredging project can proceed;
- authorize the local port authority to collect user fees from the user to cover the local share of project costs, but give the port authority wide discretion on the way project costs are to be funded and user fees are to be levied;
- if necessary, impose a user fee on all port traffic to cover a minimal share of the cost of annual operation and maintenance (O&M). This fee should be applied to all traffic in our coastal ports and should be uniformly levied on the value of the cargo.

NCA does not support the inclusion of Great Lakes ports or traffic on the Great Lakes in any port improvement or port user fee bill.

Regretfully, Title X of S. 1739 as reported by the Senate Committee on Environment and Public Works last November will not accomplish the goal of authorizing on, or providing funds for constructing and maintaining deeper channels at our ports. Amendment 3137 to S. 1739 introduced by Senator Abdnor and others on May 24, 1984 offers substantial improvement over the original language especially in the area of Federal Government guarentees for local construction loans and bonds, and in the jurisdiction of, and instructions to, a newly established National Commission on Harbor Maintenance. We urge that this amendment be considered favorably by this committee and on the floor when S. 1739 is considered. However, this amendment is not all inclusive and Title X needs further clarification through additional amendments which we expect will be introduced during floor debate.

As this committee has jurisdiction only over Sec. 1006, our initial comments will be addressed to this section.

Section 1006, as originally reported out of the Environment and Public Works Committee authorized the non-Federal interest is cover the cost of its share of a project's construction costs, as well as incremental maintenance costs through the imposition of user fees. The precise nature of the fees, the fee structure and fee schedule was left to the discretion of the non-Federal interest, however, explicit instructions were given that 80 percent of the costs be recovered from direct beneficiaries.

We believed that this provision was too restrictive as and that the port should be given greater latitude to imposed user fees at its own discretion after full public hearing.

Our statement is not without basis.

Each port faces a difficult competitive situation and has different traffic patterns as well as widely varying payback amounts and widely varying costs for project maintenance. For these many reasons, the port needs the flexibility to impose user fees in such a manner as to cause the least traffic division.

A direct mandate to impose user fees or to collect a preset portion of the cost only from on vessels requiring more than a "deep" draft further assumes that these vessels and their shippers are the only direct beneficiaries of a harbor improvement project. A study by Booze Allen Hamilton for the port of New Orleans takes issue with this assumption. That study states that "The benefits of deeper ports include transportation cost savings realized by shippers and cosignees: increased U.S. trade (to the degree to which it occurs) resulting in new production in the U.S. economy; a potentially favorable impact on U.S. balance of payments, and new jobs in the transportation industry to handle the new trade, as well as new employment associated with the actual physical construction and maintenance of the deepened channel/port. These benefits are outlined in the table on the following page.

Beneficiaries of
U.S. Deep Draft Port Projects

Scope of Benefit	Beneficiaries
Transportation cost savings accruing to existing cargo interests (producers and consumers)	National
Temporary construction and dredging jobs created to deepen the port	Local Port Areas
Jobs created by the new U.S. trade - Transportation Sector - Production and consuming	Local to Nat'l
Improved balance of payments resulting from new U.S. trade	National

"The Lower Mississippi River deepening study found that the largest benefits of the deepened channel came from transportation cost savings (realized by producers and consumers), and new jobs created in the producing and consuming sectors. The producing and consuming sectors of grain, coal, iron ore and to a lesser extent, crude petroleum are not located in the local port communities but all over the country. To assume that the local port community is the main beneficiary of a deep port is an over simplification.

"It is important to note, as indicated in the table, that the primary benefits of port deepening are realized at the national rather than local level. The U.S. port system serves and feeds our entire nation. Producers and consumers hundreds of miles inland are served by our seaports. These are the real beneficiaries of deeper U.S. ports."

NCA supports Sec. 1006, Title X as included in Amendment 3137. This provision would give the port needed flexibility in the imposition of user fees by only directing that such fees be established only after a public hearing and that the fees shall "reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessels." Further directions are given that fees not be imposed on vessels drawing less that 14 feet of draft or vessel in intraport movement.

We would further recommend that fees to recover construction costs not be imposed on vessels engaged only in inter U.S. coastal port movements.

NCA would recommend other amendments to Title X (as amended on May 24, 1984). Specifically, we would recommend that the jurisdiction of the National Commission on Harbor Maintenance be enlarged to include recovery of incremental operation and maintenance costs; that the Federal Government be authorized to advance at least 75 percent of the local ports share of the cost of port and harbor improvements, and; that the local port should not begin payback of the federal loans until the project is completed.

Thank you for the opportunity to present this statement to the Committee. I would be pleased to answer any questions you might have either now or to provide written answers for the record.

Senator **Packwood**. Let me ask you one question. On page 5 of your statement you say the "National Coal Association does not oppose the imposition of user fees to fund port and harbor improvements."

Ms. **Holmes**. No, we do not.

Senator **Packwood**. But you do oppose them for Great Lakes ports?

Ms. **Holmes**. Yes. We do not believe that they should be placed on Great Lakes' traffic at this time.

Senator **Packwood**. Under what?

Ms. **Holmes**. We do not believe that user fees should be imposed on Great Lakes' traffic or ports.

Senator **Packwood**. But it's OK on other ports?

Ms. **Holmes**. Great Lakes do not, of course, need the type of improvements that we are talking about in 1739. They don't need to be dredged. And the provisions really aren't applicable to the Great Lakes' traffic.

Senator **Packwood**. Yes, but those would be user fees that the ports themselves are going to have to levy for their purposes.

Ms. **Holmes**. Yes, but the Great Lakes ports would not themselves need any type of dredging, we have been told, to serve the traffic that they now serve. And, therefore, this type of legislation would not be applicable to them.

Senator **Packwood**. Well, if they wouldn't need it, then they wouldn't impose it, so what's the harm in giving them the power to do it?

Ms. **Holmes**. Our position——

Senator **Packwood**. I don't want to start down this road for Great Lakes or other ports, but I have a little difficulty in my mind distinguishing between the two.

Ms. **Holmes**. It is difficult, Senator. I think that the most applicable portion of the user fee for Great Lakes traffic would, of course, be applicable only to cost to recover operation and maintenance charges. And I think that in section 1001, I believe, creating this Commission, this subject will have to be studied in great detail.

Senator **Packwood**. Thank you very much.

Ms. **Holmes**. Thank you.

Senator **Packwood**. Now we will conclude with the port panel, starting with Frank Martin, the general manager of the International Port of Coos Bay, OR, on behalf of the Oregon Public Ports Association; Terry Leitzell, Washington representative for the Port of Seattle; and John Haupert, the Deputy Treasurer, Port of New York-New Jersey.

STATEMENT OF FRANK G. MARTIN, JR., GENERAL MANAGER, INTERNATIONAL PORT OF COOS BAY, COOS BAY, OR, ON BEHALF OF THE OREGON PUBLIC PORTS ASSOCIATION, PORTLAND, OR

Senator **Packwood**. Frank, good to have you with us today.

Mr. **Martin**. Thank you, Mr. Chairman. We have submitted on behalf of the 23 ports in our States a unanimous concensus relative to this issue that is addressed in this bill, Mr. Chairman. And while we feel it important that the Congress and this administration settle very soon on a priority for its waterway system, we collectively as a group—and I can speak for the Columbia/Snake River system as well—are unanimously opposed to any concept of user fee at this particular time.

If, in fact, there is a concensus in the Congress that there needs to be, it only can be treated as a fair and equitable system of taxation.

I will not reiterate my testimony or what was made. Being the last speaker I usually get to cover what everybody else didn't, but it seemed like it was covered pretty thoroughly today.

But I will say that in speaking with the President of the City Council of Chicago approximately a week ago in dealing with a 31-percent unemployment rate in their harbor port area, they are looking to build around the deep water access they have provided by the Great Lakes. The Port Administrator in Detroit, Wayne County, with a 21-percent unemployment rate is looking to rekindle and spark the economic recovery of that city through their deep water port access.

The county of Coos, where I come from, on the southern coast of Oregon is looking to develop the capacity for job development through its deep water port complex. And with the recession in the wood products industry of the Pacific Northwest, as well as with the recession in our fishing industry, we are hoping to attract, especially with the development of the Pacific rim countries, and expanding the opportunity for job development through that port complex, through that port complex, through that billion dollar asset that God created for us that we hope the U.S. Government will help to maintain and to develop as a cost effective means of transportation and relating to the economic development of not only our area but of this country as well.

The issue relative to equitable and fair cost is most important. We recognize that some ports have less cost than others to maintain and to dredge, but it's part of an overall system. It was a system developed deep in the tradition of this country, and was developed through the resources of this country. And for us to deviate from that system and that commitment at this time, I believe, as well as our sister ports in our State, as well as in other medium sized ports across the United States, that it would be a very serious mistake.

My testimony is reiterated in the briefing paper that I presented, Mr. Chairman.

In conclusion, I want to thank you quite honestly, quite sincerely, as well as the members of this committee, because I believe this is a very key issue that requires an awful lot of work because it's going to have a tremendous impact, probably very detrimental if the architects of this particular bill are—let this bill become part of law of our country.

And I only hope that the U.S. Government will continue to give us the opportunity to develop our asset and to develop the capacity for export-import through our port complex by an equitable and fair system.

Thank you, sir.

[The prepared statement of Mr. Martin follows:]

Testimony of

Frank G. Martin, Jr., General Manager

Oregon International Port of Coos Bay
Port Building, Market & Front Streets, Coos Bay, Oregon 97420

I am Frank G. Martin, Jr., General Manager of the Oregon International Port of Coos Bay. I am here today to represent the concerns of our Port and the 23 ports in Oregon.

Oregon ports are representative of the divergent navigation needs of ports throughout the country. These ports include small and large ports; river and coastal ports; deep-draft ports and shallow-draft ports; ports which accommodate foreign exports and imports, as well as coastwide and inland domestic trade, including breakbulk, containers, wheat, automobiles, bulks, agricultural products, and forest products.

The Oregon ports recognize the objective the Administration has to recover federal expenditures for the national ports and waterway system. However, in addition to raising money, the objective of any transportation or port development legislation should be to improve the nation's transportation system and to improve our position in world markets. Oregon ports agree that the standards and measurements for success of any such legislation should be . . . does it:

- Maintain a viable, competitive transportation system.
- Minimize inflation, economic dislocation, and unnecessary increases in fuel consumption.
- Minimize the impact on United States competitiveness in world markets.

- Minimize shift of cargo to Canada or other foreign ports.

- Minimize disruption to the relative competitive position of ports.

- Recognize that the inland shallow-draft and deep-draft waterways together make a national transportation system, and that inland shallow-draft and deep-draft should be treated as one system.

Some of the more critical issues raised of a uniform system if not enacted that will be detrimental to our economic growth are:

- Diverts cargo. Segmented user charges will increase costs at some ports and waterways. This will result in a diversion of cargo from higher-cost ports to lower-cost ports regardless of other transportation efficiences. Furthermore, the increased costs at U.S. ports will cause the diversion of U.S. cargo to ports in Canada and Mexico which will not have these increased costs.

- Closes ports and waterways. With increased costs and reduced volumes of cargo, some deep-draft ports and shallow-draft waterways will close down. This will reduce U.S. navigation capability for both commerce and national defense.

- Loses foreign markets. User charges cannot be passed on to foreign consumers. The competitiveness of U.S. producers will decline because exports are traded on the world market where competition sets the price. The U.S. will lose foreign markets to foreign producers.

- Reduces balance of payments. The decline in U.S. competitiveness and the resultant loss of foreign markets for U.S. products will further reduce our balance of payments.

- Dislocates economic activity. The loss of navigation projects will result in economic displacement. This dislocation will not be limited to water transportation. Dislocations will adversely affect a wide variety of economic activities, including location of industry, employment patterns, population patterns and others.

The Oregon ports cannot support a proposal that has such severe negative impacts.

The Oregon ports cannot survive with a proposal that divides the deep- and shallow-draft portions of the waterway system and puts the burden of cost recovery on only one part of that system.

It is the Oregon ports' position that user charge legislation must be developed with far better knowledge about the impacts than is available now, including the results of the recent commerce studies of the impact of proposed legislation on the port system, the communities which operate port facilities, on the overall transportation system of the United States and on the national economy.

If user charges are mandated:

- They should apply only to new construction beyond the existing system and beyond those projects pending completion of studies authorized by Congress;
- They should be imposed on a partial recovery basis; and
- The level of partial recovery should be determined by the results of the studies of the impact on the national economy.

Furthermore, Oregon ports agree that if revenue is needed to finance the existing system:

- Revenue should be raised on a partial cost recovery basis.
- The existing system and those projects pending completion of studies authorized by Congress should continue to be a part of the federal waterways system with charges administered by the federal government.
- Such user charges should be phased in over a period of years.
- The type of charge should be a surcharge on customs duty assessed at the time of entry to the United States.

Also, before any user charge legislation is enacted by Congress, appropriate committees of Congress should hold public hearings throughout the various regions of the country, specifically including public hearings to be held in the Pacific Northwest.

In conclusion, this Administration and the Congress must realize that a system that does not take into consideration smaller ports, like ours must be prepared to address the economic fallout that will occur as the majority of ports in this country go out of business. Ports, both large and small, are vitally important to their local communities and are the principal arm of economic development. To withdraw that element from those communities, many of which are now hard pressed, is a serious mistake in the opinion of the Oregon Public Ports Association.

Senator PACKWOOD. Well, it's very clear that this bill, as it came out of the Environment and Public Works Committee, is just the nose in the tent. I can see the road we are starting down. What it is going to mean is that every port that cannot pay for its way 100 percent is not going to exist. That's going to be the ultimate conclusion of this bill 10, 15 or 20 years down the road.

Now that may be a legitimate loss, but it's not one that I share.

Mr. MARTIN. Mr. Chairman, the thing that this bill does not introduce and the people that were the architects of this bill are the tremendous commitment of local dollars both public and private. The primary thrust in this country today in economic development—and as a former director of the model cities program in Chicago, as a former administration of the 13th largest port in the country in Illinois, I can speak with some authority that this country must get behind the development of the ports to their potential. And not to defuse their capacities at this particular time.

And it's quite obvious that in the design of this bill that that was clearly the intent, as Senator Abdnor pointed out this morning. That there will only be four or five ports. David Stockman told me that 5 years ago or 4 years ago when this issue first surfaced in this new new administration. That that was a concept that they were pursuing. And I think it's the wrong concept.

I think that they have got to realize that the people in Portland in our State just passed a $40 million bond issue of moneys out of their pocket. And on a smaller note, on the southern coast we just appropriated a half a million dollars, one of the few tax bases in our State to pass, because the people in that State recognize the importance of that port, and they are going to put their own private dollars into it as well as the private operators.

And I don't think the Federal Government at this time should walk away from that commitment.

STATEMENT OF TERRY LEITZELL, WASHINGTON, REPRESENTATIVE, PORT OF SEATTLE, SEATTLE, WA ON BEHALF OF THE NATIONAL COALITION FOR PORT PROGRESS

Senator **Packwood**. Mr. Leitzell.

Mr. **Leitzell**. Thank you, Mr. Chairman. I am testifying on behalf of the National Coalition for Port Progress, a coalition of 14 major U.S. seaports with a strong interest in this legislation. We support enactment of water resources legislation this year. It is critical to move S. 1739 to the Senate floor and to a conference with the House of Representatives quickly.

Let me address specifically the issues of funding for port improvement projects in S. 1739. We believe that the current system of Federal funding of improvement projects has worked very well in our country's history. We would prefer that that system continue, at least to the extent feasible. But we also recognize that the Federal Government's current financial status requires adjustments in Federal funding.

Consequently, we understand the need for increased local participation in the funding of new projects. But having said that, I want to make two points with regard to local port participation in the funding of improvement projects.

First, as has been already stated, local ports already make substantial expenditures in the overall development of projects—access channels, berthing channels, shoreside facilities, docks, terminals, moving of bridges and roads. Those expenses are already borne by the local port authorities.

Secondly, if the local ports are to be required to participate in improvement project funding for new channels, we must have adequate authority to raise the funds to pay our share. Section 1006 does grant us the right to charge fees to project users to provide those funds. It is essentially analogous to our current practice of collecting fees such as dockage and wharfage fees to pay the cost of land site improvements.

However, we are seriously concerned with subparagraph B of that section which would severely limit the user fee authority, and, frankly, make it infeasible for us to be able to pay a local share. A requirement that 80 percent of the user fees be assessed on direct users is impractical, particularly if the benefits are construed only in terms of vessel draft as related to the channel depth.

Senator Abdnor, along with Senators Moynihan, Stafford and Bentsen, did introduce amendments which they mentioned here today which would lessen that restriction. That amendment, which has been referred to this committee, requires that local user fees reflect to a reasonable degree the benefits provided by the project. That additional flexibility is welcome, and we urge this committee to adopt it and report it out.

It also does exempt vessels with draft less than 14 feet because of the concerns of agricultural interests and the inland waterways operators. That's an exemption, by the way, that we did propose to the Senate Environment and Public Works Committee because of our desire to try to increase support for the bill.

Finally, I want to stress again the need for us to have adequate revenue streams to pay our bondholders if we are to pay our share of improvement projects. These projects must be planned and undertaken well in advance of the point of maximum use. In many cases, it will be 5 to 10 years before a project can begin to directly supply the adequate revenue to pay off bondholders.

I must stress that those decisions will be made in the real marketplace, so I believe there is adequate protection for carriers and users.

Thank you.

Senator PACKWOOD. Thank you.

[The prepared written statement of Mr. Leitzell follows:]

TESTIMONY OF
THE NATIONAL COALITION FOR PORT PROGRESS
Before the
SENATE FINANCE COMMITTEE

June 5, 1984

Mr. Chairman,

I am testifying on behalf of the National Coalition for Port Progress, a coalition of fourteen major United States seaports with a strong interest in port development legislation.

We support enactment of water resources legislation this year. It is critical to move S. 1739 to the Senate floor and to a conference with the House of Representatives quickly.

The port industry in the United States is key to our economic development. The rapidly growing trade deficit underlines the importance of an efficient transportation system to move United States goods overseas. However, in spite of this obvious need, port development authorizations have been stalled in the Congress for eight years. Port improvement projects are needed if the United States transportation system is to keep pace with the rest of the world in an increasingly competitive export environment.

I want to address specifically the issues of funding for port improvement projects in S. 1739. We believe that the current system of Federal funding of improvement projects has worked well. Since that system has produced very broad-spread economic benefits in terms of industrial growth and job creation, we believe that system should continue, at least to the extent feasible. We also recognize that the Federal Government's current financial status requires adjustments in Federal funding. Consequently, we understand the need for increased local participation in the funding of new projects.

I would like to make two points with regard to local port participation in the funding of improvement projects.

First, local ports currently make substantial expenditures in the overall development of projects. Although the Federal Government covers the costs of dredging the main channel, the local port must dredge access channels and berthing areas and provide spoil disposal sites. In addition, the port must pay for the building of docks and terminal facilities, moving of roads and bridges, and all associated landside development.

Second, if local ports will be required to participate in improvement project funding, we must be given adequate legal authority to raise funds to pay our share. Section 1006(a) grants us the right to charge fees to project users to provide those funds. This is analogous to our current practice of collecting fees such as dockage and wharfage to pay the costs of landside improvements such as docks and terminals. However, we are seriously concerned with sub-paragraph (b) of Section 1006 which severely limits our user fee authority and makes it unfeasible for us to pay our local share. A requirement that 80% of the user fees be assessed on direct users is impractical, particularly if benefits are construed only in terms of vessel draft as related to channel depth. Attached to our testimony is a detailed explanation of our concerns on this point.

Senator Abdnor, along with Senators Moynihan, Stafford, and Bentsen, introduced amendments on May 24 which would somewhat lessen this restriction. The amendment, which was referred to this Committee, requires that local user fees "reflect to a reasonable degree the benefits provided by the project." Although we continue to prefer no restrictions on those fees, the additional flexibility in the amendment is welcome, and I urge this Committee to adopt and report it out. The amendment also exempts all vessels with drafts less than fourteen feet from local port user fees and intra-port traffic. Because of the concerns of agricultural interests and inland waterways operators, we proposed this exemption to the Senate Environment and Public Works Committee staff. We hope that it will result in increased support for the bill.

Our ability to raise funds is very limited since only a few ports have taxing authority, and most ports use tax-exempt bonds for capital generation. We must have adequate revenue streams to pay our bondholders. I am submitting for the record a letter from the investment house of L. F. Rothschild, Unterberg, Towbin on this point. The beneficiaries of a channel project, direct and indirect, are numerous and should all bear a fair share of the costs. Also, improvement projects must be planned and undertaken well in advance of the point of maximum use. It may be five to ten years before a project can begin to directly supply adequate revenue to pay off bonds. Finally, I must stress that user fee decisions will be made in the real market place where the competition between ports will prevent any excessive fees.

In sum, Mr. Chairman, we understand that we must help to solve the Federal deficit problem. Consequently, we are willing to increase our financial partnership with the Federal Government, but we must have adequate tools to be able to uphold our end of the deal. If not, then we believe that substantial port development will not occur, and the legislation will not achieve its stated objectives.

Thank you.

NATIONAL COALITION FOR PORT PROGRESS

RESTRICTIONS ON LOCAL FEES

One major concern of the Coalition with the legislation is the limitation on local fees. Ports do not want to make it more expensive to operate in their harbors. New charges in a port would be assessed only where absolutely necessary and in a way that would keep that port competitive. This is particularly true today when the ocean shipping business is in an especially depressed financial condition and port competition is greater than ever before.

The Federal funding of navigation projects has always been dependent on favorable benefit-cost ratios which take into account all beneficiaries over a long term. Indeed, this legislation authorizes projects on the basis of that analysis. It is therefore illogical and inequitable for the legislation to apply a different standard, such as the direct beneficiary requirement, to the local share.

The direct beneficiary rule for the assessment of user charges promises to make it very difficult, if not impossible, for project costs to be recovered through user charges. Rather, the legislation should allow maximum flexibility to the non-Federal entity to assess reasonable port charges as the specific situation warrants. Reasons for that view include:

(1) Beneficiaries of any given project are not limited to the specific user of the project depth of that channel. Projects benefit a wide range of economic activity at all levels of the port community and beyond. Direct and indirect employment increases might be seen with the added business an improved channel might bring.

The deepened channel may make for safer navigation of the port by ships that are not dependent upon the greater depths, but for which the added margin of safety is very useful. There may be less chance of collisions, oil spills and other accidents.

Barge firms, ship chandlers, shipyards and other businesses could benefit by increased traffic in the port. Even outside the port, shippers, such as coal companies or manufacturers, and their employees may find their products more attractive to the export market if transportation costs are less with the use of larger ships. Certainly they all could be beneficiaries of the improved channels.

(2) Another problem with the direct beneficiary policy expressed in the bill is that not all channel projects are deepenings. The widening of the Houston Ship Channel is a good example of a project whose costs would have no relationship whatsoever with the draft of the vessels making use of it. Would the 80% rule apply in this instance to only wide or long ships? What lengths and widths determine whether a vessel is a direct or an indirect beneficiary?

(3) Channel improvement projects and the associated landside development in ports are long-term undertakings. Even with a completed channel deepening, it may take five or ten years for the traffic to develop to the point of making efficient use of the project depth. Under the direct beneficiary rule, the first few years of a deepened channel may see only a small number of vessels which could not be expected to bear the local share by themselves.

(4) If the legislative goal is port charges representative of the market place, the local entities should be able to determine charges that take into consideration the local and regional economy, the port condition and other factors peculiar to their ports. The recommended charges would be reviewed and considered in public hearings which is, and should be, required by the legislation.

(5) The greater the specificity in statutory language defining beneficiaries, the greater the incentive for vessels to evade fees through light-loading and similar strategies. In addition, and as a practical matter, chances for litigation greatly increase with such specificity.

(6) A port is an integrated network of channel, marine terminals, railroads and highway access routes. A port cannot be divided into segments, each segment required to stand on its own merits. Revenue return on individual facility type varies. Those with less revenue return may provide greater employment opportunities (e.g., breakbulk versus container or bulk handling) or may meet a needed public purpose.

Therefore, ports generally pool their facility revenues and expenses and use consolidated revenues as a basis for selling port revenue bonds. Usually, the port's entire credit base supports bond sales regardless of how the bond revenues will be utilized. Port tariffs for facilities use are equalized within a port, and quite frequently, are equalized among a number of ports in a region.

Requirements that a percentage of local costs for channel improvements be applied only against the direct users of that channel are inconsistent with the port economic philosophy described above.

(7) Candidly, the reason that the Congress is considering local cost-sharing and user charges is that the Government wishes to reduce the Federal share of channel costs for budgetary reasons. In other words, the user fee issue is not motivated solely by an interest in applying fine user-pay concepts of economics. In shifting the burden, it is therefore not fair to tie the hands of the non-Federal entity in how it would recover its share of the costs by dictating direct-beneficiary rules.

(8) Finally, we ask the Committee to be mindful of the responsibility of the public port authority. It is a public authority serving a public purpose. It is not a private concern. It must plan for future development. It must anticipate trade opportunities and vessel technology by as much as twenty years in advance for a port to remain competitive and serve those direct and indirect beneficiaries enumerated earlier. Port directors cannot be shortsighted and judge a channel or landside improvement by its short-term performance and pay-off. The public interest is not necessarily served in such a way. Port authorities cannot plan for the prospective needs of port users with restrictions on their ability to get the work done.

STATEMENT OF JOHN HAUPERT, DEPUTY TREASURER, PORT OF NEW YORK-NEW JERSEY, NEW YORK, NY

Senator PACKWOOD. Mr. Haupert.

Mr. HAUPERT. Thank you, Mr. Chairman. In the interest of time, I would like to make just one comment in support of the need for clearly-defined and a certain stream of revenues. As the assistant treasurer of a major port authority that has issued a lot of tax exempt debt for ports and other public benefit facilities, I have had the opportunity to participate in the sale of several major bond issues. My experience with underwriters, rating services, and municipal bond analysts has taught me the secure revenue stream is one of the major factors considered in evaluating the strength of an issue.

I am convinced that any uncertainty regarding the realization of projected revenues will result in higher costs to issuers. Therefore, if local share costs are to be recovered by user fees, I strongly suggest that adding impediment to a clear definition of the source of revenues, such as the limitation on how fees may be assessed, should be eliminated.

Thank you.

Senator PACKWOOD. Gentlemen, thank you. You have been very patient sitting here this afternoon. It has been a most illuminating afternoon. I don't think there is anything more to be said. We will stand in adjournment.

(Whereupon, at 4:25 p.m., the hearing was concluded.)

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT
of the
American Soybean Association
to the
Subcommittee on Taxation and Debt Management
Committee on Finance
U.S. Senate
June 5, 1984

Subject: S. 1739

Mr. Chairman:

The American Soybean Association thanks the Committee for the opportunity to provide comments for the hearing record on waterway and port development legislation, S. 1739 -- specifically, Sections 502 and 1006 of the bill.

The American Soybean Association is a national, volunteer, non-profit, producer-controlled, single commodity association organized to assure the opportunity for a profitable soybean industry. ASA is supported by more than 480,000 soybean producers who voluntarily invest in ASA programs through 25 separate statewide soybean checkoff programs. ASA seeks to maintain soybean profitability through its foreign market development, research, producer and public information, and government relations programs.

Concerning Section 502 -- American soybean farmers cannot support giving the Secretary of the Army full authority to impose and collect user charges from users of the inland waterway system, as this section would provide. We believe this authority must rest with the Congress, and not be entrusted to the Administration to decide at will what its priorities will be and to tax the nation's waterway users and shippers accordingly. In addition, this section does not outline the type of user charge the Secretary could employ, nor does it limit the amount that could be charged from year to year. Instead, ASA supports the concept of a national commission that could be developed to report to Congress specific recommendations for needed shallow-draft navigation improvements and the type of taxing mechanism that would be most appropriate. Studies have shown that producers of agricultural commodities are the ones who end up absorbing such additional charges. It is with this fact in mind that we are concerned with this broad taxing authority and urge its deletion.

Section 1006 of S. 1739 would provide authority to non-federal interests to recover costs of port improvements -- not less than 80% of which could be assessed on direct beneficiaries. Such improvements would include port deepening costs which most vessels carrying agricultural commodities do not utilize. If agricultural commodity carriers do not need the deeper drafts, why pay for them? Authority for collection of such charges should, again, rest with the Congress and not be handed over to private interests. While ASA certainly recognizes that a viable and dependable port system is in the interest of U.S. commerce and national defense, costs for port improvements such as port deepening which benefit special interests, should be assessed appropriately.

ASA thanks the Committee for its work on this important piece of legislation and for the opportunity to present our views.

STATEMENT
BY THE
FOREST INDUSTRIES COUNCIL

The Forest Industries Council (FIC) is pleased to submit its views relative to the issue of port user fees, which is addressed in Title X of S 1739, the "Water Resources Development Act of 1983." The Council is a policy-coordinating body located in Washington, D.C., comprised of organizations with nationwide interests in the growing, processing, production, and marketing of wood and wood fiber forest products.

The term "forest products" includes fiber raw material from the forest (logs, pulpwood, chips, etc.), solid wood materials (lumber, plywood, particleboard, etc.), and products made from wood fiber (pulp, paper, paperboard, etc.). The producing member organizations of the FIC all relate to one or more of these forest products. They are the American Paper Institute, Inc., American Plywood Association, American Pulpwood Association, National Forest Products Association, Southern Forest Products Association, and Western Wood Products Association. A very substantial portion of our industry's products moves via ocean transportation for sale in foreign markets.

We think that everyone will agree that a modern, efficient, viable port system is essential to the nation's commerce and to the needs of the national defense. Up until now, the full burden of the costs of construction, operation, and maintenance of the nation's ports has been borne by the federal government. We recognize that we have reached the time when this cannot continue. Our industry is on record that part of the expense should be borne by the private sector through the medium of user fees, uniformly and fairly assessed.

There are two crucial features of any port user fee which are of enormous importance. The first of these is that a uniform fee be applied at every port in the United States. The second is that the measurement of the fee be applied on an ad valorem basis.

Our industry, while using most of the major ports, also depends heavily upon smaller ports such as Coos Bay, Oregon, Panama City, Florida, and Wilmington, North Carolina. If site-specific user fees were applied for operations and maintenance, the grim fact is that the traffic moving through smaller ports would not generate the revenue necessary to maintain them properly. As a result, they would soon be unable to compete effectively in the export-import trade. If such ports were no longer available, a significant amount of forest products exports would be jeopardized since companies in our industry using these ports would be faced with increased inland transportation charges to reach larger, more viable ports.

The competitive balance between and among the ports would no longer exist in the absence of a uniform user fee. It is simply not sound policy when introducing the new concept of a user fee to destroy the tremendous national asset reflected in all of these ports.

Turning to the method of assessing user fees, we consider our exports to be commodities which are heavy loading, low in value, and price sensitive. Any fee charged is by nature detrimental to our sales and marketing efforts. In this regard, our industry, seeking to ship wood chips, logs, flitches, and cants in the export market, is in essentially the same situation as shippers in the trade of other low value bulk commodities such as coal or grain. The ad valorem approach, in our view, is far fairer than applying the fee according to tonnage as it assures that market sensitive commodities will not be priced out of the world market.

In summary, FIC supports the concept of port user fees to cover a portion of port costs, provided such fees are fairly applied to the users and work to preserve the existing national port system. In our view, these fundamental criteria can be met through implementation of a uniform, national assessment based on the value of imported and exported cargoes.

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L.F. ROTHSCHILD, UNTERBERG, TOWBIN

April 3, 1984

Mr. Thomas Skirbunt
Environment & Public Works Committee
Subcommittee on Water Resources
United States Senate
410 Dirksen Building
Washington, D.C. 20510

Dear Mr. Skirbunt:

We are writing in response to your request for our thoughts concerning the ability of the ports to underwrite their share of costs associated with the dredging of their harbors and channels. Our concerns are directed at five specific areas which we believe will impact the ability of ports to finance their share: federal involvement, federal guarantees, industrial revenue bond restrictions, operation and maintenance and user charges.

I. Federal Involvement

In general, the greater the federal share the less the ports will be required to finance and the more feasible the projects will become. As a general principal, greater federal participation will result in stronger port bond issues. We would like to see no federal payback of the federal share, but in the event such payback is required it is vital that it be subordinate to other indebtedness and operation and maintenance costs. Interest should be waived. It is our feeling that a greater federal share, if properly structured, will result in a more competitive U.S. port industry in comparison to the rest of the world, which should help support greater trade through American ports.

II. Federal Guarantee

In order for the ports to underwrite their share of dredging costs it is important that a major portion of the debt issued by the ports, be guaranteed by the federal government. Unless the federal government is willing to guarantee 90% of the bonds issued by the ports we are concerned that the ports could have difficulty marketing bonds. In conjunction with the guarantee, we recommend the following:

1. The guarantee be available on tax exempt port debt to allow greater financing ability per dollar in user fees raised. If the guarantee cannot be implemented with tax exempt debt due to Treasury regulations or other legal constraints, we suggest a federal subsidy for the difference between taxable and tax exempt interest, such subsidy to be determined at the outset of each project and maintained for the life of each bond issue. The subsidy should be non-reimbursable to the federal government. For example, a rate differential of 4% will cost the federal government $40,000 per year for each $1,000,000 in financing.

2. The repayment of the guarantee, in the event it is used and if payback is required, should be subordinate to operation and maintenance obligations and other debt of the port, and be without interest.

3. The federal guarantee be on the total indebtedness for the dredging project, not just construction costs, to account for capitalized interest and other costs.

4. Before the federal government guarantee becomes effective, we would anticipate that the government would require that the 10% non-guaranteed share is irrevocably secure.

III. **Industrial Development Bonds**

The port industry historically has relied on private capital similar to the airports in this country. In order to insure ports will be able to attract this type of investment, and because the port industry represents a vital national interest, it is important that port IRB's/IDB's be excluded from the restrictions to such financings. We also can envisage a situation occurring with respect to dredging where a port bond issued for dredging purposes could be deemed to be an IRB because only a few users would benefit directly. The exclusion is a significant issue to ports beyond the dredging issue. For these reasons we recommend an general exclusion for ports from the restrictions to IRB financings.

IV. **Operation and Maintenance Costs**

Operation and maintenance of dredged channels must be assured. Direct federal involvment for 100% of the maintenance of channels would be in order. If not, local port maintenance costs should be guaranteed under arrangements similar to the recommended bond guarantees. If operation and maintenance charges are borne entirely by the federal government the ports could conceivably be able to carry a heavier burden of debt to support the non-federal share, making more projects viable.

V. **User Charges**

User charges should be structured in such a way as to insure investor acceptance with respect to ease of interpretation, determination and administration, assurance of collection, and primacy of lien of revenues. At a minimum, any question regarding the efficacy of the revenue stream to secure debt will reduce investor confidence in the source and increase financing costs on the non-guaranteed portion of port debt. If significant doubt exists, financing could be impossible if secured only from this source of revenues.

Since it is anticipated that port debt service is to be paid from revenues it is important to assure sufficient monies, particularly since payment of interest and repayment of debt is subject to completion of construction, to pay such debt service even in the event of project construction delays. It may be appropriate to allow ports to secure their share of debt service by any means the port chooses, including user charges on direct beneficiaries, or the other general charges, fees, and general revenues of the port.

If possible the revenue source used to secure port bond issues should not be held hostage to the appropriation procedures, but should be automatically available to pay principal and interest on port debt once a project has been approved.

We trust the foregoing proves helpful to you in your deliberations. Please feel free to contact us if you have any questions pertaining to the material presented.

Very truly yours,

L.F. ROTHSCHILD, UNTERBERG, TOWBIN

Carl Van Wye Hensley
Vice President

Robert A. Lamb
Vice President